United States Court of Appeals
for the Second Circuit

APPENDIX

ORIGINAL

77-6190 & 77-6195

United States Court of Appeals

For the Second Circuit.

B P/S

IN THE MATTER
OF

The Complaint of TUG OCEAN PRINCE, INC., and RED STAR TOWING & TRANSPORTATION CO., as Owner and Charterer of the Tug "Ocean Prince" for Exoneration from or Limitation of Liability,
Plaintiffs and Third Party Plaintiffs-Appellees and Cross-Appellants,

v.

UNITED STATES OF AMERICA,
Third Party Defendant-Appellee.

UNITED STATES COURT OF APPEALS
FILED
MAR 3 1978
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellant,

against

PITTSTON MARINE TRANSPORT CORP.,
Defendant-Appellee,

TUG OCEAN PRINCE, INC., and RED STAR TOWING & TRANSPORTATION CO.,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

JOINT APPENDIX.

Volume II—Pages 395a to 838a.

MCHUGH, HECKMAN, SMITH & LEONARD
Attorneys for Defendant-Appellant-Appellee
Pittston Marine Transport Corp.
80 Pine Street
New York, N. Y. 10005
(212) 422-0222

HEALY & BAILLIE
Attorneys for Defendants-Cross-Appellants-Appellees, Tug Ocean Prince, Inc., and Red Star Towing & Transportation Co.
29 Broadway
New York, N. Y. 10006
(212) 943-3980

THOMAS J. CAHILL
United States Attorney
GILBERT S. FLEISCHER
Attorney in charge Admiralty & Shipping Section
JANIS G. SCHULMEISTERS
Trial Attorney
Attorneys for Plaintiff-Appellee-Appellant
26 Federal Plaza, Suite 4048
New York, N. Y. 10007
(212) 264-0482

THE REPORTER COMPANY, INC., New York, N. Y. 10007—212 732-6978—1978

(3696)

PAGINATION AS IN ORIGINAL COPY

INDEX TO APPENDIX.

Page

Docket Entries (74-3358) 2a

Docket Entries (75-5801) 7a

Opinion and Order of Judge Goettel 9a

Complaint 60a

Answer of Defendants Red Star Towing & Transportation Company and Tug Ocean Prince, Inc. . 69a

Answer of Defendant Pittston Marine Transport Corporation 73a

Deposition of Walter E. Reimer, Taken on April 27, 1976 . . . . 83a

Excerpts From Transcript 240a

Deposition of Walter K. Kristiansen (Exhibit CC) . 796a

Deposition of Walter Reimer (Exhibit 5) . . . 816a

TESTIMONY.

WITNESSES FOR PLAINTIFF:

Blomquist, Hubert T.:

Cross by Mr. Schulmeisters 323a

Redirect by Mr. Losquadro 340a

Recross by Mr. Schulmeisters 342a

Fraccaro, Albert E.:

Direct by Mr. Losquadro 487a

Cross by Mr. Beshlian 509a

Page

Glass, Charles A.:

Direct by Mr. Losquadro 519a

Cross by Mr. Schulmeisters 560a

Redirect by Mr. Losquadro 577a

Hallock, Melvin W.:

E.B.T. 442a

Keenan, Philip:

Direct by Mr. Kimball 703a

Cross by Mr. Schulmeisters 719a

Cross by Mr. Beshlian 726a

Redirect by Mr. Kimball 745a

Kiernan, John:

Direct by Mr. Losquadro 345a

Cross by Mr. Beshlian 389a

Cross by Mr. Schulmeisters 407a

Redirect by Mr. Losquadro 427a

Recross by Mr. Schulmeisters 441a

Kristiansen, Walter:

Direct by Mr. Kimball 240a

Cross by Mr. Schulmeisters 271a

Cross by Mr. Beshlian 300a

Redirect by Mr. Kimball 313a

Page

Kristiansen, Walter (con't):

Recross by Mr. Schulmeisters 317a

Recross by Mr. Beshlian 318a

Redirect by Mr. Kimball 319a

Recross by Mr. Schulmeisters 321a

Recalled:

Redirect by Mr. Kimball 777a

Recross by Mr. Beshlian 789a

MacLeod, Malcolm:

Direct by Mr. Kimball 613a

Cross by Mr. Beshlian 614a

WITNESSES FOR GOVERNMENT:

Glass, Charles A.:

Direct by Mr. Schulmeisters 578a

Cross by Mr. Beshlian 602a

Hallock, Melvin W.:

Direct by Mr. Schulmeisters 680a

Recalled:

Direct (continued) by Mr. Schulmeisters . . 760a

Cross by Mr. Losquadro 773a

Page

Kerns, Gerald D.:

Direct by Mr. Schulmeisters 664a

Cross by Mr. Losquadro 668a

Schwartz, Max:

Direct by Mr. Schulmeisters 747a

Cross by Mr. Losquadro 751a

Warman, Robert:

Direct by Mr. Schulmeisters 675a

Whiteley, John Fredrick:

Direct by Mr. Schulmeisters 657a

Cross by Mr. Kimball 663a

Wortmar, Edwin L.:

Direct by Mr. Schulmeisters 751a

Cross by Mr. Kimball 755a

WITNESSES FOR DEFENDANT PITTSTON:

Boge, John:

Direct by Mr. Beshlian 626a

Cross by Mr. Schulmeisters 632a

Page

MacLeod, Malcolm:

Direct by Mr. Beshlian 619a

Cross by Mr. Schulmeisters 623a

Cross by Mr. Losquadro 624a

Redirect by Mr. Beshlian 625a

Stillwaggon, James G.:

Direct by Mr. Beshlian 633a

Cross by Mr. Losquadro 651a

Q But you don't know how long a period of time that was?

A No, sir.

Q Captain, when you have a man -- have you ever had any men assigned to your boat for a temporary period because of a short-handedness in the crew?

A Yes, sir.

Q When someone is assigned to your boat, does the office tell you about his experience?

A No, sir.

Q Do they give you any information with respect to his qualifications or licenses or anything such as that?

A No, sir.

MR.LOSQUADRO: I am going to object, your Honor. I don't know if this is relevant. I think the criteria here is whether or not the office is satisfied with the level of performance of the men they put in the pilothouse.

THE COURT: Well, yes, but what we have here is a situation where the dispatchers thoughg they put a very experienced captain aboard the vessel with an admittedly inexperienced in these waters mate, but the transfer were accomplished in such a manner that the experienced man didn't know he was the captain and didn't know that the person he thought was the captain didn't know the river at all.

MR. LOSQUADRO: I don't think that's a fair statement, your Honor, that a man doesn't know the river at all.

THE COURT: Well, I will modify that, had not personally steered the river before; he had been up or down as a deckhand a few times.

MR. LOSQUARDO: He certainly was familiar with the geography.

THE COURT: You take a different approach to things when you are the guy at the wheel than when you do when you are just riding along.

MR. LOSQUADRO: Since that time he has served many years as a navigator.

MR. SCHULMEISTERS: I object to this argument right now in front of this witness during this inquiry.

THE COURT: I think it's not a good argument. However, I will put this question to the witness:

Had you been aware, when relieved at 2330 on the night of February 2nd, that you, at least insofar as Red Star was concerned, were considered the captain and that your mate never steered the river before, would you have undertaken to have given him some advice or assistance concerning further navigation considering the conditions that existed?

THE WITNESS: Yes, sir.

Q Captain, you stated in your direct testimony this monring that when you reached a point off of Fort Montgomery area, it would normally start to steer its course towards Sugarloaf Mountain or Sugarloaf Hill. Can you tell by some fixed landmark or object when you were opposite Fort Montgomery?

A Yes, sir.

Q How is that, sir?

A Right there there is a marina. Thereis lights right in that little section.

Q Does the chart --

MR. BESHLIAN: Your Honor, may I --

THE COURT: The chart doesn't show any lights, doesn't show any marina either. I take that back, it shows a little pier. I can't tell whether it's showing piers or wrecks.

THE WITNESS: Wrecks, sir?

THE COURT: It shows two wrecks?

THE WITNESS: Yes, sir.

THE COURT: The marina then doesn't show in the chart.

THE WITNESS: No, sir. The marina is just south of those wrecks.

Q If your visibility is obscured, can you pick it out by radar?

MR. LOSQUADRO: Pick wha[illegible] by radar?

MR. BESHLIAN: Fort Gomery area.

A No,sir.

Q What do you use if your visibility is obscured if you fix your position when you start to take that -- steer a direction towards Sugarloaf Mountain?

A Well, sir, I would use the radar then.

Q What would you use to determine your location, what objects?

A Mystery Point, if I could see it.

Q Can you pick up Mystery Point on the radar?

A Yes, sir.

Q How about Bear Mountain Bridge?

A Yes,sir, you can pick up the line, yes.

Q Using that as a mark, would you be able to fix your position generally in feet, miles or yards north of the Bear Mountain Bridge?

MR. LOSQUADRO: Objection. I don't know if he would use the bridge after having passed through it.

Why don't you put that?

Q Would you use Bear Mountain Bridge as some sort of mark if your vision was obscured? Would you use that as a means for determining your position after having passed it?

A Yes, sir.

Q What would you use forward of you, say Mystery Point?

A Con Hook.

Q Anything else?

A Con Hook.

Q Can you pick up Con Hook on the radar?

A Yes.

THE COURT: How high is the light on Con Hook?

THE WITNESS: I think about 25 feet.

THE COURT: Is it a solid or skeleton frame?

THE WITNESS: Skeleton frame.

THE COURT: Does it give much of a radar reflection?

THE WITNESS: The light itself does not, no, sir, not one bit.

THE COURT: The configuration of the land gives you --

THE WITNESS: That's right.

MR. LOSQUADRO: Are you assuming no ice configurations which might throw a contorted picture back?

THE COURT: If you get ice accumulations on an ebb tide on the river, do you still get a radar target from Con Hook?

THE WITNESS: If the ice is heavy, it might distort it.

Q Captain, when you came on watch, am I correct you were able to see Con Hook Light?

You said you were able to see Con Hook Light?

A Yes.

Q If I remember correctly, you said somewhat to the north between the forward corner of the barge and about midships on the barge?

A Right.

Q Indicating you were heading generally a bit to the northeast?

A Yes, sir.

Q You made a turn after you determined that the vessel was not hard aground, is that correct?

A Yes, sir.

Q You made a hard right turn?

A Yes, sir.

Q In making that turn, did you approach the eastern shore of the river?

A Yes, sir, in that direction.

Q Can you tell me how close you came to the eastern shore?

A I'd say 500 feet.

Q WEre you able to see the eastern shore at that point?

A With the searchlight, yes.

Q Were you able to see it without the searchlight? Could you pick it out?

A It was kind of dark.

Q Is there anything along the inshore, Captain, that would give you a radar return so that you could fix your position in distances from the eastern shore? Is there any hill or object that fixes a return for you?

A Just Mystery Point.

Q Once you have passed Mystery Point, you lose that advantage, is that correct, sir?

A Yes.

Q But you would know from the radar when you were either abreast or approaching Mystery Point?

A Yes.

Q On your trip back down towards the Bear Mountain Bridge, did you board the barge at all?

A No, s ir, I didn't.

Q You stayed at the wheel until it was made up alongside Bear Mountain Bridge?

A Yes, sir, we were behind the barge.

Q Did you at any time go aboard the barge?

A Yes, sir, I talked to the bargeman.

Q Was that aboard the barge or was it on the tug?

A It was aboard the barge.

Q Did you examine the barge?

A No, sir.

Q Did you go forward and look at the tanks?

A No, sir.

Q Did you determine that the barge was leaking oil?

A Yes, sir.

Q Did you determine what tanks it was leaking oil from?

A No,sir.

Q Did there come a time when the barge appeared to be in danger of sinking, Captain?

A No, sir.

Q Was there ever a time that the water was over the bow of the barge on the port corner?

A No, sir.

Q Not at all?

A No, sir.

Q Did you ever consider taking the barge out of Bear Mountain Day Line Park Pier and putting her on the beach?

A Yes, sir.

Q Why was that?

A I didn't want her to sink.

Q You thought of it but there was no danger of her sinking?

A Well, sir, there is an explanation to that.

Q What is it?

A Moran was bringing the barge up from, I believe, Ossining, New York. It took him so long to get there that I figured if we left the barge there she might sink. At that particular spot, there is 116 foot of water. I figured if I got the barge back maybe about Peekskill Light and run her on the beach there she wouldn't sink. That was the only reason I was going to do that.

THE COURT: Did you give any thought to beaching her as a means for stemming the oil flow?

THE WITNESS: Just so she wouldn't go under water.

THE COURT. You weren't considering the fact that a lot of oil was polluting the Hudson at that point?

THE WITNESS: Well, sir, I believe we had already lost that whole tank.

THE COURT: You thought the tank had emptied right out?

THE WITNESS: Yes, sir.

THE COURT: How many tanks did that barge contain?

THE WITNESS: I have no idea, sir.

Q Captain, you stated that you came out on deck after feeling a bump and after having been called by the deckhand within one to five minutes of this incident. YOu say that the barge was making some headway. You said through the water and over the ground?

A Yes, sir.

Q Were you able to estimate about how much headway she was making?

MR. LOSQUADRO: Do you mean in speed?

MR. BESHLIAN: Yes.

A Maybe a couple miles an hour.

THE COURT: Through the water or over the ground?

THE WITNESS: Through the water, sir.

Q What was the stage of the ebb tide, if you recall?

A I don't remember.

Q Do you know about how fast she was running?

A Maybe a half a mile an hour.

Q Captain, when you went aboard the Ocean Prince, was there a light list aboard?

A I don't know, sir.

Q How about the company's pilot?

A I don't know that either, sir.

Q Did you check the vessel to see if she was properly equipped with the required aids of navigation?

A No, sir.

Q You wouldn't refer to these, would you?

A No, sir.

Q You would be able to steer the Hudson by seaman's eye?

A Yes, sir.

THE COURT: And you know the aids along it without looking at the light list?

THE WITNESS: Yes, sir.

Q Captain, do you remember being at the government's office, I think it was, March 25th of 1976 at which time your deposition was taken?

A Yes, sir.

Q There were questions and answers propounded at that time?

A Yes, sir.

Q I am referring to page 43 of the deposition and these following questions were asked and these were the answers given:

"Q Did you get any local Notice to Mariners on the tug? "

The answer was "No, sir."

"On the Tug Ocean Prince, do you know" --

MR. LOSQUADRO: Where are you reading from?

MR.BESHLIAN: Line 17 down.

Q "Were there any Notices to Mariners on board when you joined her on February 1 or 2"?

"A No, sir."

MR. LOSQUADRO: Your Honor, I'd like to interject here. Line 15 was left out. The first question was "On the tug Crow --" which, I believe, was this man's tug at the time, "didyou get Notice to Mariners" and the anwer was "No, sir."

Then it goes down further, "On the Ocean Prince, do you know if there were Notices to Mariners on board when you joined her".

Answer, "No, sir."

In other words, no, sir, I didn't know on that tug, on the Tug Ocean Prince.

THE COURT: One of the problems about asking questions whether somebody knows something is when he answers negatively you don't know whether he is answering the question or indicating a lack of knowledge.

MR. LOSQUADRO: Why don't we ask him.

Q The bottom question on that page, sir, was there a light list on board and your answer was no, sir.

Do you remember that question and answer?

A Yes, sir.

Q Was it correct then, Captain?

A I did not look for them. I didn't know it then.

MR BESHLIAN: I have no further questions at the moment, your Honor.

CROSS EXAMINATION BY MR. SCHULMEISTERS:

Q Captain, during that deposition that took place on March 25, 1976, were you given this chart and did you make some marks on it?

A Yes, sir, that's correct.

Q Did you make a mark showing how the tug and the barge were heading when you came back of the wheelhouse?

A Yes, sir.

Q Is that indicated there by the line?

A Yes, sir.

Q Which has been labelled Point A?

A Yes, sir.

THE COURT: I think you better identify your exhibit.

MR. SCHULMEISTERS: It has been premarked as Red Star 11 for identification. It was marked during Mr. Kiernan's deposition as Government Exhibit 4 on March 25, 1976. Obviously, I think, I will be offering it, so do you think maybe we should change it to a government's exhibit?

THE COURT: Change it, if you are offeering it. It will be Government's Exhibit BB?

MR. SCHULMEISTERS: No, I think it's DD.

(Government's Exhibit DD was marked for identification.)

THE COURT: Any objection to its reception in evidence?

It will be received.

(Government's Exhibit DD was received in evidence.)

Q Does that line which has been labelled with the letter A show or indicate that the tug and the barge were heading directly for the Con Hook Light?

A Yes, sir.

Q I refer to Page 79, starting with Line 17, "Q Who maneuvered the boat out of that area after the incident"?

"A I did."

"Q Can you explain how you did that?

"A Once I got my bearings, not awake, I seen she was heading for the light."

Then of course you continued, whatever you did.

Did you give that answer to these questions at that time?

A Yes, sir.

MR. LOSQUADRO: Could you read the entire answer, Mr. Schulmeisters?

MR. SCHULMEISTERS: This is only with respect to whether or not it was reading for the light, that's the only point I was trying to make.

MR. LOSQUADRO: It's already in evidence, I believe. He sighted the light and it was ahead.

THE COURT: Yes, but he testified that the heading was slightly east of the light.

MR. LOSQUADRO: I think he said he sighted it in his testimony today between the center of the bow of the barge and the port corner.

THE COURT: That would make it slightly easterly of the light where as his deposition has the pointing directly at the light.

MR. LOSQUADRO: No, it just says heading for the light; precision was not requested, sir.

THE COURT: All right.

MR. SCHULMEISTERS: Your Honor, may we leave the argument as to what it means afterwards so that I can ask the witness my question without this type of interruption which, I think, are suggestions to the witness.

THE COURT: Please continue.

BY MR. SCHULMESITERS:

Q You testified earlier, a few minutes ago, that ice might distort the radar return on Con Hook, is that correct?

A Yes, sir, there was a lot of it, yes.

Q Did you see Con Hook Island on radar on that night after the incident?

A Yes, sir.

Q So you did, so actually it was observable on the radar on the Ocean Prince?

A Yes.

Q So, radar range to that Con Hook Island could have been taken on that night?

A Yes, sir.

Q I believe you testified if there is restricted visibility, you also use the Bear Mountain Bridge to get your bearing or your position in the river, is that correct?

A Yes, sir.

Q So the radar on board the Ocean Prince on that evening and the conditions that were there, the radar could have been used to get the vessel's position by referring to, one, the Bear Mountain Bridge and, two, the Con Hook Island?

A Yes, sir.

Q Does the radar on the Ocean Prince also have a cursor?

A Do you mean -- I don't understand the question.

Q You don't understand the term cursor.

Would you describe for us the radarscope, please?

A Oh, I understand.

Q The scope is round, is it not?

A Yes, sir.

Q Your position is the center?

A Yes.

Q There are small hairlines that pass through the center, there is one hairline passing through the center and it can be turned back and forth?

A Yes.

Q There is a 360 degree gradation at the edge of the radarscope?

A Right.

Q So with this cursor you can get a bearing of an object?

A Yes, sir.

Q So, the radar could have been used to take a bearing and also to get a distance, particularly since you could see the Con Hook Island, is that correct?

A Yes.

MR. LOSQUADRO: Does not the question assume, your Honor, an ccurate picture of the island on the radar screen?

THE COURT: He wasn't specifically asked that. YOu may ask it on redirect.

Q Let's turn to Page 40 of your deposition. Let's go over this again. Starting Line 17 were these questions asked and were these answers given?

MR. LOSQUADRO: Your Honor, I think the man ought to testify today. If Mr. Schulmeisters want to use the deposition to show an inconsistent prior statement, that's fine.

THE COURT: I am assuming that's what he is doing.

MR.SCHULMEISTERS: Your Honor, I think --

THE COURT: Proceed with your question.

BY MR. SCHULMEISTERS:

Q Were these questions and answers given, starting at line 17 "Was the radar operating?

"A Yes, sir.

"Q Did you look at the radar?

"A Yes, sir.

"Q Did the radar show the Con Hook ahead of you?

"A Yes, sir."

Did you give those answers to those questions?

A Yes, sir.

Q And they were the truth, right?

A Yes, sir.

Q And you made no comment at that time about being an erroneous picture of Con Hook Island, is that true?

THE COURT: He hasn't said that here today. That was Mr. Losquadro who suggested that.

MR. LOSQUADRO: Your Honor, I am going to object. I think since he is on this area you ought to read the next question and answer.

THE COURT: You can do it on redirect because the answers just given do not contradict the testimony already given.

Q What was the freeboard of the barge?

A About two feet.

Q Could you explain what freeboard is?

A The part of the barge that is above the water.

Q Can you describe for us, please, how was the tug and the tow made up?

A We were pushing the barge, stern pushing.

Q Can you describe for us, please, exactly how was it -- what was the arrangement? Did the bow fit onto anything or --

A Yes, sir, the bow of the tug --

MR. LOSQUADRO: I am going to object, your Honor. Haven't we been through this before?

THE COURT: I read it in Mr. Reimer's testimony twice last night. I am not absolutely certain at this point whether or not this witness testified about it yesterday.

MR. LOSQUADRO: I believe I asked him specifically yesterday how he made up the lines he used. I had him describe the lines.

MR. SCHULMEISTERS: May I inquire about it for a minute or two?

THE COURT: All right. Speed it up.

Q Does the barge have a notch?

A Yes, sir.

Q Is that a permanent installation on a barge?

A Yes, sir.

Q Does the bow of the tug then fit into this notch?

A Yes, sir.

Q Then you put out the lines that you described earlier in response to Mr. Losquadro's question?

A Yes, sir.

Q Then the tug is then secured very securely to the barge, is that correct?

A Yes, sir.

Q So that if you have an engine movement in a tug, that changes the movement of the whole group of vessels or the flow tilt, is that correct?

A Yes, sir.

Q If you have any movement by the rudder of the tug, the same thing would happen, is that correct?

A Yes,sir.

Q So the barge has no motor power of its own?

A That's right.

Q But the two vessels are joined together so that if there is any movement by the tug the whole --

MR. LOSQUADRO: We stipulated the propulsion is provided by the tug, that it has a rudder and it does turn the unit. We stipulated it a towing notch. Do we have to go through this?

THE COURT: Why don't you just make an objection?

MR. LOSQUADRO: I object on those grounds.

THE COURT: I sustain the objection. You are summing up on your argument that this is a flotilla and should be mentioned on the combined length of the tug and the barge for purposes of the environmental pollution --

MR. SCHULMEISTERS: I just want the facts that this is exactly how it was made. It certainly is stipulated to in the pretrial order, I recall that.

MR. LOSQUADRO: Your Honor, flotilla, as Mr. Schulmeisters would like to use it, is a legal concept.

THE COURT: Let's move on with this witness at this time.

MR. SCHULMEISTERS: Your Honor, I just want to make it clear for the record that the New London and the tug, Ocean Prince, both moved together as one unit.

MR. LOSQUADRO: Hopefully.

MR. SCHULMEISTERS: Let me ask the witness a question, please.

Q In the manner that they were made up, the tug to the barge, did they move together as one unit?

A Yes, sir.

Q Once you came back to the bridge or the wheelhouse of the tug, did you see or could you observe with your eye the shoreline?

A It was dark but I could see the outline of the shore, yes, sir.

Q So you did see the outline of the shore on both the east and the west side?

A Yes, sir.

Q You mentioned that after you took over the Con and you turned the flotilla around and started back toward the Day Line pier, as you were turning around, did you see the lights on the Bear Mountain Bridge?

A Yes, sir.

Q Would you please take a pair of dividers and measure for me the distance from the point where you were turning around to the Bear Mountain Bridge?

MR.LOSQUADRO: What are the two points again, Mr. Schulmeisters, Bear Mountain Bridge and what?

MR. SCHULMEISTERS: Where he was turning

around the barge, where he said he could see the lights on the Bear Mountain Bridge.

THE WITNESS: It's approximately two miles.

THE COURT: How much longer do you expect to be?

MR. SCHULMEISTERS: I am just checking over a few items. I shouldn't be very long, your Honor.

Q On the tug or in the wheelhouse, I should say, is there a chart table?

A Yes, sir.

Q Where is that?

A Directly in backof the wheel.

Q It's in back of the wheel behind you, right?

MR LOSQUADRO: He said it's in back of the wheel.

A In the back of the wheel.

Q If you are steering, you'd be looking ahead, would you not?

A Yes, sir.

Q So,if you want to look at the chart you had to turn around and face away from the direction in which you were going, is that correct?

MR. LOSQUADRO: The question assumes that that's where it is at all times. It can be picked up and put right in front --

MR. SCHULMEISTERS: I object, your Honor; this is merely suggesting answers to the witness.

THE COURT: When you went up to the bridge after you were called by the mate, the deckhand, rather, did you observe where the chart was at that time?

THE WITNESS: It wason the chart table.

MR. LOSQUADRO: Your Honor, the question was never put, as I can recall, to mate Reimer whether or not he had it in front of him or --

THE COURT: I don't recall any questions put to him about the chart at all. If there were, they were innocuous type of questions.

MR. LOSQUADRO: The chart was gone over quite a bit, as I recall.

THE COURT: In terms of how he was using it and where he had it at the timeof the stranding.

MR. LOSQUADRO: I don't recall right now.

THE COURT: If there is something in there in that regard, would you point it out to me?

MR. LOSQUADRO: Yes, sir, certainly, Judge.

(Last question read.)

A Sir, if I was using the chart, the chart would be directly in front of me.

Q Where would you put it?

A Anywhere.

Q What kind of lights did you have in front of you when you were standing by the wheel?

A I would use a flashlight.

Q Where would you put that chart?

A I would put it on a radar stand or anywhere, just so I would have it directly in front of me.

Q If you wanted to make some measurements on it with a pair of dividers, where would you put those?

A On the chart table.

(Recess.)

BY MR. SCHULMEISTERS:

Q Incidentally, Captain Kiernan, when you went back to the wheelhouse did the radar show the outline of the shoreline?

A Yes, sir.

Q It also showed Mystery Point area?

A Yes, sir.

Q Getting back to the time when Reimer took the watch over from you, who else was in the wheelhouse when Reimer came up?

A I don't remember who else was in there at that time.

Q Would you like to look ag Page 30 of your deposition, starting with line 13. Does it refresh your recollection where your deckhand was?

A Yes, sir.

Q Where was your deckhand?

A I assume he was in the galley.

Q He was not in the wheelhouse?

A No, sir.

Q Would you please take the dividers and measure the distance from Con Hook Island to the easterly shore of the river there. What do you get, sir?

A About 400 yards.

Q Thatls all roughly the navigational channel there, that area?

A Yes, sir.

Q Would you please measure the distance from Buoy 25 to the easterly shore?

A It's about 450 yards.

Q That's roughly the navigational channel there, is it not?

A Yes, sir.

Q Would you ever consider navigating to the left or west of the buoy of that rock?

A No, sir.

Q Did you expect ice when you started out on this voyage?

Q Yes, sir.

Q Did you know that ice buoys were on the river at that time of the year?

A Yes, sir.

Q As you testified earlier, you knew sometimes these ice buoys are partially covered or bobbing up and down?

A Yes, sir.

Q So, this information that soneone who was experienced on the river like yourself had, right?

A Yes, sir.

Q When did you get your first license, sir?

A 1973.

Q What kind of license was that?

A Operator of tugboats, uninspected.

Q An operator for uninspected vessels?

A Yes, sir.

Q Did you take an examination to get this license?

A Yes, sir.

Q What was this examination?

A It was a written examination.

Q What did it deal with?

A Mostly little pilot rules, navigational --

Q Was it open book or closed examination?

A Closed book.

Q You took it where?

A In the Coast Guard, yes, sir.

Q Are you sure that it was a closed book exam?

A Yes, sir. We had no books.

THE COURT: Under inland rules, when there are no other vessels in the vicinity, must a tug keep to t he starboard side of the channel or may it stay mid channel?

A Starboard side of the channel.

THE COURT: Even though there is n other traffic in the area?

THE WITNESS: When it's safe and practical, yes, sir.

THE COURT: You always pssed under inland rules port to port?

THE WITNESS: Yes, sir.

MR. LOSQUADRO: I assume your question assumes a passage in a narrow body of water.

THE COURT: Yes, in a river.

MR. LOSQUADRO: A reciprocal heading situation.

THE COURT: Yes, passing. Not overtaking, passing.

MR. LOSQUADRO: Reciprocal headings?

THE COURT:Yes.

Q Exactly reciprocal or could there be --

MR. LOSQUADRO: Generally reciprocal.

THE COURT: In a river they are going to be reciprocal because you are passing, unless --

Q Did the Ocean Prince have any equipment with which to take bearings?

A No, sir.

Q I am talking about visual bearings now.

A Yes, I understand, sir; no, sir.

THE COURT: There was no azimuth over the gyro?

THE WITNESS: No, sir.

Q The only thing available was the cursor and the radar?

A Yes, sir.

Q And that would give you a relative bearing, is that correct?

A Yes, sir.

Q What is the difference between a relative and a true bearing?

A I don't understand.

Q Could you just take a bearing on the radar and lay it on a chart?

A Yes, sir.

Q Would you not have to consider your course, your true course?

A Yes.

Q And then apply the difference?

A Yes.

Q Then you would have to apply the difference from your heading on true course?

A Yes.

Q So it would take a little bit of figuring?

A Right.

THE COURT: Your radar didn't have a switch which allowed you to turn the picture to true rather than relative?

THE WITNESS: No, sir.

Q Did your radar have a heading flasher?

A Yes, sir.

Q It could be turned on and off, is that correct?

A Yes, sir, as long as you held the switch.

Q As long as you held the switch you would have the heading flasher showing, right?

A Right, sir.

Q At any point you could push the button and see whether or not your heading for the Con Hook Island?

A Yes, sir.

Q By the way, within what accuracy could you measure distances on the radar?

A You could measure up to a couple of yards.

Q Up to a couple of yards accuracy?

A Yes, sir.

Q How far from the wheelhouse was your stateroom?

A It was right in back of the pilothouse.

Q It's a matter of a few steps to get to the wheelhouse?

A Yes, sir, that's right.

THE COURT: Returning to your statement that the radar was accurate to a couple of yards, I interpreted that answer as meaning that if you were taking a range on something a distance away, let us say 200 yards, that if your radar said 200 yards you knew it was within a couple of yards of being 200 yards away?

THE WITNESS: Yes, approximately.

THE COURT: The radar is located at the top of the mast above the tow?

THE WITNESS: On top of the pilothouse.

THE COURT: That's some maybe 25 or 30 feet above the water line?

THE WITNESS: Yes, sir.

THE COURT: The can buoy sticks only a few feet out of the water?

THE WITNESS: Yes, sir.

THE COURT: How close-up on a target that low can you still get a radar return?

THE WITNESS: I'd say a hundred yards.

THE COURT: If you are closer than a hundred yards, your radar signal is going to be passing over the can?

THE WITNESS: Yes, sir, correct.

THE COURT: Let me ask you another question: Forgetting the ice for a moment, if you had no ice, no waves, at what range would you expect your radar to first pick up a can buoy three foot out of the water?

THE WITNESS: Approximately a mile.

THE COURT: Continue.

MR. SCHULMEISTERS: That's it, thank you. No further questions.

REDIRECT EXAMINATION

BY MR. LOSQUADRO:

Q Captain, do you, from time to time, use your deckhand to assist you to navigate?

A Yes, sir.

Q Would you describe the conditions during which you would do that?

A Well, sir, if it was foggy and I had to watch the radar I would have him steering.

Q Is there any restriction on you as to anyone else you can use on the tug?

A No, sir.

Q Is it your practice, if you deem it necessary, to break out the other pilot houseman?

MR. SCHULMEISTERS: Objection, leading.

THE COURT: Well, I will allow it but let's avoid it in the future.

A I didn't understand the question.

Q The question was is it your practice, if you deem it necessary, to break out the other pilot houseman. Actually the question should have continued -- to assist you in navigating?

A Yes, of course.

Q Would it make any difference if you were the captain and he was the maid or if you were the mate and he was the captain?

A No difference.

MR. SCHULMEISTERS: Your Honor --

MR. BESHLIAN: I didn't hear the answer.

THE COURT: He said no difference.

MR.SCHULMEISTERS: Objection, it is a leading question.

THE COURT: I will allow that.

Q Is there any restriction, do you feel any restriction or is there any restriction by your employer to breaking out the other deckhand?

A No, sir.

Q Captain, who normally signs the daily log reports?

MR. BESHLIAN: Your Honor, I think we went through this yesterday.

THE COURT: We did.

MR. LOSQUADRO: I thought we might have, I wasn't sure.

THE COURT: The captain.

MR. LOSQUADRO: The captain is what the answer is. I don't know how much of it he said here and how much he said out in the hall.

THE COURT: He said the captain signs them. It was pointed out to him that he signed the log on the 3rd, I believe.

MR. LOSQUADRO: These are the log reports.

The log book is not signed, the log reports are signed.

THE COURT: Yes, the log report for February 2nd is signed by you, I take it.

THE WITNESS: Yes, sir.

THE COURT: When did you sign that report and send it in? Obviously it had to be after the 2nd. How long after the 2nd?

THE WITNESS: It could be a day or so.

THE COURT: By the time you signed this, was it apparent to you that they were considering you to be the captain or did you sign it because of some other reason?

THE WITNESS: I signed it because of some other reason.

THE COURT: What reason was that?

THE WITNESS: Because nobody was taking care of the paper work, that's the reason I signed it.

THE COURT: Was Mr. Reimer still on board?

THE WITNESS: I believe he was, sir, yes.

THE COURT: Was he still upset?

THE WITNESS: Very upset, yes.

Q Captain, did you also sign the report for February 3rd?

A Yes, sir, I did.

Q Captain, what appears on the reverse side, if anything, of this document, on this particular document? It is blank, it's a Xeroxed copy, but what is on the reverse side of the daily tug report?

A Usually the payroll.

Q What goes on there, sir?

MR. SCHULMEISTERS: Your Honor, I object. This is a tug company that's a party in litigation. If they want the back of that report they can bring it here.

MR. LOSQUADRO: They have all been given to Mr. Schulmeisters for a couple of months, I think.

MR SCHULMEISTERS: I am not saying I haven't gotten it. I am saying if you are going to use evidence as to what is on the back of that sheet bring it into court.

THE COURT: You are about to ask him --

MR. LOSQUADRO: There is a place for a signature, but I will ask him.

Q Is there a place for a signature on the reverse side?

A I don't remember.

Q What is listed on the reverse side?

A The names of all the crew members.

Q Is overtime listed on the other side?

A Yes, sir.

Q Do you remmeber if you filled out the reverse side?

A I believe I did.

Q Are these normally the captain's functions?

A Yes, sir.

Q The logbook which is something different and which we saw is not signed, who makes the entries in there?

A The captain and the mate.

Q When would the captain make it and when would the mate make it?

A The captain would make it on his watch and the mate would make his entries on his watch.

Q Captain, have you been to areas with a mate or captain to which one of you had not been before?

A Yes, sir, many times.

Q Is it a practice for the man unfamiliar with the area to sedk advice of the man --

MR.SCHULMEISTERS: Objection, your Honor, that is absolutely leading.

Q Is it a practice, is there a practice?

THE COURT: All right. Your question is not completely proper because you haven't put as part of the premises that one or the other of them is familiar.

MR. LOSQUADRO: I did, sir, I thought I did.

THE COURT: You said if you went there and one of them wasn't familiar, you didn't say if the other was familiar.

MR. LOSQUADRO: I intend to. I am sorry if I left it out.

THE COURT: What, if anything, is the standard practice in the tugboat trade when one of two steerers is familiar with the waters and the other is not.

THE WITNESS: Well, sir, if they asked advice or ask you to sit up with them I'd be glad to sit up with them.

MR. BESHLIAN: Your Honor, I think the answer is what Mr. Kiernan would do, but I don't think it's a direct response to your question.

THE COURT: Is that what is normally done by tugboat captains and mates to your knowledge?

THE WITNESS: I don't really know, sir.

Q Is that your practice, sir?

A Yes, definitely.

Q Is that good practice, in your opinion?

MR. BESHLIAN: Objection.

MR. SCHULMEISTERS: Objection, your Honor.

THE COURT: Sustained.

Q If you were the experienced man and your alternate was not, your mate or your captain was not, and you were asked to assist, would you feel any reservations on assisting?

MR. SCHULMEISTERS: Objection, your Honor, there was already testimony that he wasn't even told that the other man was --

MR. LOSQUADRO: I am going to get to it if you let me.

THE COURT: Get to it first then.

Q Captain, did Mate Reimer ask you to sit up with him for any part of his watch?

A No, sir.

Q Had he done so, he done so, would you have stayed up?

MR.SCHULMEISTERS: Objection, your Honor.

THE COURT: Overruled.

Q Would you have done so?

A Yes, sir.

Q If he asked you for advise, would you have given it to him?

A Yes.

Q Would it have made any difference to you whether you were designated the captain or designated the mate on that boat?

MR. SCHULMEISTERS: Objection to this line of questioning.

THE COURT: Overruled.

A No, none.

Q Captain, are you absolutely certain today that Mate Reimer did not ask you for advice?

MR. SCHULMEISTERS: Objection.

Q Or is that the best of your recollection?

MR. SCHULMEISTERS: He already testified.

THE COURT: I will allow it.

Q Are you certain?

A Yes, I am sure, yes.

THE COURT: In fact, I get the impression that prior to the occurrence you had just two brief discussions with Mr. Reimer?

THE WITNESS: Yes, sir, that's correct.

THE COURT: Each of them continuing anywheres from 5 to 15 minutes and that these are sort of general, how are you, good to know kind of discussions.

MR. LOSQUADRO: That's not what he said.

THE COURT: They didn't concern the trip or the river or navigational matters, did they?

THE WITNESS: No, sir.

Q That's your best recollection today, is that correct, sir?

A That's right, sir.

Q You testified earlier in this case, and I refer you to page 68 of your deposition, sir, you have it before you.

Actually it starts on Page 67, sir, bottom, last question. I am going to ask you if you were asked these questions and you made these answers:

"Q At that time, he relieved you. Did you have any conversation about his experience?

"A No, sir.

"Q Did you give him any specific instructions with respect to what to expect?"

MR. SCHULMEISTERS: Objection, your Honor.

THE COURT: YOu seem to be impeaching your own witness.

MR. LOSQUADRO: I want to see if this better refreshes his recollection and I have a right to impeach him on this point, sir.

MR. SCHULMEISTERS: No, your Honor, I think this is also leading.

MR. LOSQUADRO: The rules of evidence are quite clear on it, sir.

THE COURT: It's true you don't vouch for a a witness any longer. I will let you refresh him.

MR. SCHULMEISTERS: The objection is as asked in a deposition is leading.

THE COURT: It is not the question we are interested in. It is whether the answer refreshes his recollection as to what the facts were.

Q "Q Yes, did you give him any specific instructions with respect to what to expect?

"A I just told him a couple of bad spots he might have to look out for."

Were you asked that question and did you make that answer?

A Yes, sir, I did.

Q Does this refresh your recollection today of the possibility of any savings with Mr. Reimer?

A Other than that, no.

THE COURT: Well, what is "that"? What bad spots did you mention?

Q If you remember, sir.

A Probably Buoy 21 was one.

Q Is that one that you would -- do you consider that a bad spot in the river?

A Myself, no, sir.

Q Not to you?

A Right.

THE COURT: Incidentally, the government seems to be making much of the fact that an old chart was in use which designates that buoy as 21 whereas because of the insertion of a couple of other buoys it has been renumbered 25. I can see that of having been of some significance if he picked up the buoy and had seen the number on it, but under the circumstances what difference does it make whether he thought the buoy was No. 21 or No. 25?

MR. SCHULMEISTERS: Basically it shows slatternliness of the maintenance of the tugboat and --

MR. LOSQUADRO: I object to this, your Honor.

Q With utter disregard of what the tug has or does not have?

THE COURT: Let's move on.

Q There were no changes on location or contracts of that aid, further on that point?

THE COURT: I know.

Q You might recall from reading the testimony of Captain Reimer last night, you might recall he knew the obstruction was there, he knew it was marked by a black hand.

THE COURT: Thaq's what he testified to. Although, if you use the light list and have the wrong number, you run the risk of not picking up the fact that the light is replaced by the can.

MR. LOSQUADRO: It's what he expected to see there and what was in fact missing.

One point I wanted to make, someone mentioned today --

THE COURT: Why don't we finish with the witness before we make points.

While you are looking I will ask the witness some questions that interest me.

Captain, I have never had the opportunity of seeing radar operate on a confined body of water like a river which has ice in it, when you are using your radar on your shortest range, let's say a mile and a half, and you've got ice flows in the river, do you get a return from the least ice or only the piled up ice on the side?

THE WITNESS: Just the ice that's high and piled up, the high stuff.

Q How high would an ice flow have to be before you start getting a return off it?

A If it was a good clear day maybe a foot above the water.

Q This area around what was then Buoy 21, it is a small channel between it and the west bank but it is not very wide. Does ice tend to fill up in there in the winter?

A Yes, sir, it does.

Q When it fills up there, does it start giving you a radar return?

A Only if its lapped.

Q Does it ever lap during the winter?

A Yes, sir.

Q Doesn't that make it difficult to pick the buoy out of the ice by radar?

A Impossible. Pretty near impossible to see it.

THE COURT: Even if the buoy is not covered the radar is going to be kicking the ice back at you as well as the buoy and you wouldn't be able to distinguish it?

THE WITNESS: That's right, sir.

MR. LOSQUADRO: Your Honor, I have no further questions of this witness.

THE COURT: All right, I guess we can excuse the witness then.

MR. BESHLIAN: No further questions, your Honor.

MR. SCHULMEISTERS: I have one thing, I think, I really overlooked asking him.

RECROSS EXAMINATION

BY MR. SCHULMEISTERS:

Q This man Vogel you testified to about earlier, you never personally met him?

A Yes, sir, I met him.

Q Did you not testify earlier that you didn't really know the man?

A Not too personally, but I know him.

Q Where did you meet him?

A See him going by in the river and we say "Hi," that's about all.

Q When you say you met him, that means that he went by you on the river?

A Yes, we see him at various docks and just say "Hello," that's about the extent of it.

Q No real extensive personal conversation with him?

A No, sir.

MR. SCHULMEISTERS: Thank you; no other questions.

(Witness excused.)

THE COURT: Go ahead and read those parts.

MR. KIMBALL: The witness' name is Captain Melvin W. Hallock.

Page 4:

"Q Captain Hallock, would you state your full name for the record, please?

"A Melvin Ward Hallock.

"Q What is your home address?

"A Quarters 15, U. S. Coast Guard, Support Center, Governor's Island, New York 10004.

"Q Do you live on Governor's Island?

"A Yes, I do.

"Q What is your present occupation?

"A Officer in the Coast Guard.

"Q Can you tell me what your rank is in the Coast Guard?

"A Captain.

"Q How long have you been a captain in the Coast Guard?

"A A little over three years.

"Q Can you tell me what your present duties are as a captain in the Coast Guard?

"A On the staff of the commander, Third Coast Guard District, chief of the aides to navigation branch.

"Q How long have you been the chief of the aides to navigation for this district?

"A About 15 months."

MR. KIMBALL: Skipping to the bottom of page 5:

"Q Can you tell me who your predecessor as chief of the aides to navigation division was, if you know?

"A Captain Charles Glass.

"Q Do you happen to know if Captain Glass is still in the Coast Guard?

"A Yes, he is.

"Q Can you tell me what his duties are in the Coast Guard at present?

"A He is also on the staff of the commander, Third Coast Guard District, and is presently chief of the operations division.

"Q Chief of the operations division?

"A Yes.

"Q Can you tell me what your duties as chief of the aides to navigation division are?

"A My duty is to -- well, they are multi-fold.

"First, I am to oversee and perform any planning function or evaluation of the aides to navigation systems in the Third Coast Guard District; I am to oversee and monitor the performance of the aides to navigation operating units in the district. I am also to maintain liaison with the users of the navigation system."

MR. KIMBALL: Skipping to page 8:

"Q Do your duties include the supervision of aides to navigation on the Hudson River?

"A That's one of the systems in the Third Coast Guard District, yes.

"Q What procedures or criteria exist within the Coast Guard generally for determining where to place specific buoys?

"A It depends on a number of things. Actually, there are three different approaches made when you are designing an aids to navigation system. We talk about -- the aids to navigation system is what we call an external system which is external to the floating unit.

"In order to establish that system, we determine whether it is a navigable water, depending on the depty of the water, type of traffic in those waters. It would depend somewhat on, for instance, weather conditions or sea conditions which are normally experienced in that area. Not solely but certainly a big factor is the cost benefit to the public of marking a particular area or particular waterway."

MR. KIMBALL: Skipping to page 9 in the

middle of the page:

"Q Are there different criteria for placing buoys along the Hudson River near Troy as opposed to down near the George Washington Bridge or is there a general overall body of procedures which you use in determining where to place buoys?

"A In the Hudson River, in one section you can say, there is different criteria. In one section of the Hudson we have what we call a cut channel, specific channel. Those channels use a different system in order to mark that as opposed to what we would call a natural channel where dredging is not necessary or performed."

MR. KIMBALL: Skipping over to page 13:

"Q Captain, what procedures or criteria are used in the Coast Guard in the Third District for determining what type of buoy would be placed at a specific location?

"A The criteria used there would be the type of traffic that would be utilizing that particular channel or waterway. The depth of water, in the case of a cut channel where, essentially, we are attempting to mark the delineation of the channel, would have a bearing, for instance, on the size of the buoy we would use whereas in a natural channel that same criteria would be used, but you would have probably a different answer.

"In other words, basically in a natural channel we would mark anything we consider to be an obstruction, whereas in a cut channel we are attempting to delineate the limitations of the channel."

MR. KIMBALL: Skipping to the top of 14:

"Q Would the configuration of the land surrounding the river have any bearing on the type of buoy you would place on a particular spot?

"A It could have, yes.

"Q In what situation would the configuration of the land enter into your decision?

"A If you are working in waters where you have a very low height above the water, in that case you would attempt to use a buoy which would be visible in a contrasting background, where you would have both sky and backgrounds of land or very little land to deal with, whereas if you are in an area with a great deal of land, you would use a buoy which would be visible against the darker background.

"Q Does your office from time to time receive information or complaints either from the Coast Guard or from any other persons that a specific buoy is off station?

"A Yes, we do.

"Q Do you from time to time receive complaints that a specific buoy has disappeared?

"A Yes, we do.

"Q I would like to ask you the same question:

"Do you from time to time receive complaints that a specific buoy is inadequate for its intended purpose?

"A Yes, we do.

"Q What procedures exist within the Coast Guard for considering and acting on such information or complaints?

"A That's all of the ones you have mentioned?

"Q Yes, those three, that a buoy is off station, where a buoy has disappeared or is inadequate.

"A The initial action is broadcast notice to mariners. We're required to broadcast informing the mariner, describing what every signal or characteristic that's peculiar to that aid is, either not operating properly or is not operating at all.

"If it's going to exist for any particular period of time, then we would go to the local notice to mariners, that's issued weekly.

"With regards to your third question, which would have to do with the adequacy of the aid, we would then go back and review the criteria that we used in order to establish that aid.

"Q When you say 'we" in the Third Coast Guard District, who specifically are you referring to?

:A That's my responsibility as chief of aides to navigation.

"Q Who would you consult with in trying to determine whether or not a specific aid is adequate for its purpose?

"A We, of course, within the staff, we have what we call our planning officer. He would probably take the project on. He, in turn, would talk to people in the staff who have local knowledge. We probably would go to the Coast Guard units. We probably would go back to the person who initiated this information and determine specifically what he felt was inadequate about the aid in the event he didn't present that the first time around, and if it were necessary or if we had identifiable users we would go to them -- might go to them. It would depend again, and ask them as to adequacy, or if we agreed that it should be changed, we would go to them and point out to them as charastics of the aid to replace the one complained of.

"Q Are these procedures that you outlined applicable in your district, or are they generally applied in the Coast Guard around the country?

"A It's applied through the Coast Guard."

MR. KIMBALL: Skipping to page 17, to the middle:

"Q I would like to follow up on a suggestion that Mr. Schulmeisters made sometime ago and ask you to take another look at the chart we have previously referred to.

"I wonder if you would locate for us, by making a pen mark on the chart, but I number 25.

"MR. SCHULMEISTERS: (To witness) Use a red pen.

"MR. LOSQUADRO: Off the record.

"A You are speaking of the lower Hudson River 25 which is this buoy right here?

"Q That would be the buoy I am referring to.

"A Is that over far enough?"

MR. KIMBALL: Skipping to page 18:

"Q Thank you, Captain.

"Can you tell us what kind of buoy the chart indicates at the location you have marked?

"A It indicates a lighted buoy.

"Q Can you describe what type of lighted buoy is at location number 25?

"A I probably should refer to the record, but that's probably -- what we have out there is what we call 717.

"Q What does that mean?

"A 7 feet in diameter and 17 feet tall."

MR. KIMBALL: Skipping over to page 24:

"Q Do you know what kind of buoy was located at the position of buoy 25 on February 3, 1974?

"A I would have to refer to the file.

"Q I see. I wonder if you would take a moment to do that.

"A That was --

"Q February 3, 1974.

"A On that particular date we had -- I have got to refer to another page. The size is what we call a second class can on this report.

"Q Is that your answer, second class can?

"A Yes.

"Q I see.

"What are the dimensions of a second class can?

"A Again, I could only give an estimate.

"Q How high above the water would a second class can extend?

"A Probably four to four and a half feet."

MR. KIMBALL: To the bottom of page 25:

"Q I wonder if you can explain why, if the chart indicates there was a lighted buoy, there would be a can buoy at that location in the month of February, 1974.

"A In the Hudson River during the wintertime, they make up ice, and of course the ice moves up and down the river, depending on the tidal influence.

"We have what we call seasonal buoys, and this particular buoy is a seasonal buoy.

"During the time that we consider the river to be ice-free, we place a lighted buoy on that particular station. During the time there is danger of ice, we replace it with an unlighted buoy, in this case a can buoy."

MR. KIMBALL: Skipping to the bottom of page 26.

MR. SCHULMEISTERS: Excuse me, could you read the next two questions and answers, please?

MR. KIMBALL: You may read them if you'd like.

MR. SCHULMEISTERS:

"Q Can you tell me why a lighted buoy is located at this station eights months of the year?

"A Well, a lighted buoy would enable them to transit at night, and we are marking what we consider to be an obstruction to navigation.

"Q What obstruction to navigation is located at that point?

"A It's a shallow spot here indicated on the chart.

"Q Does the chart indicate the presence of rocks?

"A Yes, it does.

"Q Is one of the purposes of the buoy to mark a rocky location?

"A It is to warn the mariner that there is a danger in that area. If he refers to the chart, he would then know that there is rocks in that area, yes.

"Q Does not the same need,according to the Coast Guard's own standards, for a lighted buoy exist the remaining four months of the year when a can buoy is placed at that location?

"A In planning an area where there is ice, you have to take into consideration as best you can what will best mark a location. In the case of these seasonal changes, we change to an unlighted buoy because it's likely to be displaced by the ice. A lighted buoy presents a considerable surface area to the ice and will sweep it off the station or submerge the buoy.

"Q I am not exactly sure that is responsive to my question.

"MR. SCHULMEISTERS: I think it is very responsive.

"Q Your statement deals with the possibility of the buoy remaining at a specific spot. My question dealt with a rather different matter, and that is whether or not the same need for a buoy at that location would continue to exist during the winter months.

"A The need for the buoy at that location does continue to exist during the winter months.

"Q Has your office ever received a report, let us say, in the period of the last five years which would precede your tenure, that the can buoy was under the ice?

"A I really could not answer that. We are only required -- on letter files we are required to keep them for a maximum of three years, so I couldn't address myself to five years ago."

MR. KIMBALL: Skipping to page 29:

"Q So then, I take it, it is your testimony that you do not know if a report has ever been received within the last five years that the can buoy was under ice?

"A No, no, I -- we have received reports that the can buoy was under ice, yes.

"Q You have. Can you provide us with any details as to any of those complaints?

"A Well --

"Q When were they received? Who did they come from?

"A No. I can say last year we had reports that the buoy was under ice, but right now I couldn't specifically tell you who reported it.

"Q This was in 1975 or 1976?

"A That would be the winter of 1975-1976, yes."

MR. SCHULMEISTERS: Your Honor, I move to strike everything with respect to 1975 or 1976 as happening after the occurrence, and it's inadmissible.

MR. KIMBALL: At this stage of the case, I think you can almost take judicial notice that the can buoy occasionally goes under the ice at any time during the winter.

THE COURT: Well, from the standpoint of the danger, I guess you can take matters after it, from the standpoint of notice of the government you cannot consider it.

MR. KIMBALL: That's right. It's the danger question.

THE COURT: There is no value from a notice standpoint.

I think we also have to take into account that winters differ in severity. This past winter was one of the most severe we have ever had, and I believe that the icing in the Hudson this past winter was unusually great.

MR. LOSQUADRO: The answer was the winter of '75-76.

THE COURT: I understand that.

MR. KIMBALL: Skipping over to page 31:

"Q Is it possible that the can buoy located at position 25 could go under the ice flow or an ice flow so that it would not be visible to passing vessels?

"A Yes.

"Q If the buoy was under the ice, would it, in your opinion, be an effective aid to navigation?

"A During the time it's under ice?

"Q Yes.

"A No.

"Q I wonder if you would look at the chart again and tell us if the area surrounding buoy 25 would, in your opinion, be an area that is peculiarly susceptible to the accumulation of ice flows.

"A Well, again, I could address it strictly as an opinion. The makeup of ice, of the flow of ice, depends on the currents and the tidal flow especially. The Hudson River as a whole is very susceptible to ice and makes up ice.

"Q Is the area in the vicinity of buoy 25 susceptible to the accumulation of ice, in your opinion?

"A Oh, yes.

"Q Why?

"A Well, this is a relatively narrow portion of the river, and the ice -- major direction of flow of ice, of course, would be down the river, so, you would be having ice coming from upriver, let alone the ice that makes up in the area of the buoy."

MR. KIMBALL: Skipping to the top of page 33:

"Q Can you tell by looking at the chart whether the area surrounding buoy 25 is one that is susceptible to eddies?

"A I would suspect that there would be eddies south of Con Hook, yes.

"Q Can you tell me if the Coast Guard has any established ranges in the area of buoy 25?

"A By established you mean ranges that we would construct?

"Q That is right.

"A No, there are no ranges."

MR. KIMBALL: Skipping pages now, your Honor, to page 43 at the bottom line:

"Q Does the Coast Guard have internal regulations concerning the inspection of buoys?

"Q Yes."

MR. KIMBALL: Skipping to the bottom of that page 44:

"Q Can you tell us what procedures exist for buoy 25?

"A Of course, on buoy 25 it is required to be visited twice a year because it's seasonal, and it's relieved twice a year, so that all of these visits then are combined of those two visits as far as requirements go.

"Q There would be a total of two visits to the buoy a year?

"A If there were no discrepancies, yes."

MR. KIMBALL: Skipping to page 48, again the bottom line:

"Q Do you have vessels working on the Hudson River which have the purpose of reporting to you accumulations of ice? Do you have inspection vessels traveling up and down the Hudson River?

"A No, we rely on the mariner for that information.

"Q So then it is true that the Coast Guard for the Third District does not have a regular inspection system to locate the buoys which are under ice?

"A No."

MR. KIMBALL: Skipping to page 52 --

MR. SCHULMEISTERS: Your Honor, I move to strike this as this is irrelevant. For discovery purposes it's one thing, but light list, of course, has notice of this to the mariner.

THE COURT: Overruled.

MR. KIMBALL: Middle of page 52:

"A Has the Coast Guard ever considered establishing a range to guide vessels between Mystery Point and Con Hook that you know of?

"A Not that I know of."

MR. KIMBALL: Skipping to page 56 at the bottom:

"Q I had two questions which were broken up. The first was whether or not you would consider it possible to fix a land-based aid which would indicate" -- interjection by Mr. Schulmeisters -- "to fix a land-based aid?

"MR. KIMBALL: Yes, fix; to establish.

"MR. SCHULMEISTERS: Oh, okay.

"Q -- to establish a land-based aid which would indicate the presence of rocks in that area?

"MR. SCHULMEISTERS: The objection is noted.

"(To witness) Go ahead and answer it.

"A It would be possible, yes."

MR. SCHULMEISTERS: Objection, your Honor.

THE COURT: Overruled.

MR. KIMBALL: Skipping to page 59, the bottom line:

"Q What type of land-based aid would it be possible to establish?

"A In the case of daytime, I don't think there would be an adequate land-based aid that would assist or be able to specify that rock that was in that particular area.

"Q How about in the case of nighttime?

"A Nighttime, then it would be possible.

"Q What type of aid could be established?

"A The aid we would most commonly use would be what we call a sectorized light.

"Q Can you describe what a sectorized light is?

"A This is an all-round light. In other words, 360°. If it were a white light, we would sectorize that light in the direction of where this obstruction or men as to navigation was, for instance, with a red sector. That's the most common way that we would accomplish that.

"Q I see.

"Has your office ever considered this possibility for the buoy 25 area?

"A Not to my knowledge.

"Q Could a range be established which would alert mariners to the danger of rocks in the vicinity of buoy 25?

"A A range light, a set of range lights, either dual set or we do have what we call a directional light, is normally used to guide the mariner in a specific direction.

"Under our present system, we wouldn't expect the mariner to interpret the range light as indicating there were rocks in any particular area. We would be indicating to him where we want him to go.

"There's a difference in this in interpretation, so I think it's important that I state it that way.

"Q Fine. Now answer the question.

"MR. SCHULMEISTERS: I think he has answered it as best he can.

"Q My question is could a range be established which would inciate to mariners the location of good, safe water in the area of buoy 25."

MR. SCHULMEISTERS: May I state my objection, your Honor. Your Honor, whether something is possible in the whole Hudson River, physically possible to put ranges each and every foot, and I think this is basically the type of a question, when did you stop beating someone --

THE COURT: I don't think it is, but you are arguing the ultimate points, must the government do everything it possibly could do, and that's not an evidentiary question, that's a legal issue.

I will allow the question and answer.

MR. KIMBALL: The question was directed only to the area of buoy 25. The question was:

"My question is, could a range be established which would indicate to mariners the location of good, safe water in the area of buoy 25?

"A Yes, a range could be established.

"Q Has the Coast Guard ever considered this possibility, to your knowledge?

"A To my knowledge, no.

"Q Now, have you at any time reviewed the aids to navigation work reports concerning buoy 25 for 1974?

"MR. SCHULMEISTERS: 1974.

"MR. KIMBALL: 1974.

"A Yes."

MR. KIMBALL: Skipping to page 64:

"Q Now Captain, I show you a file which is marked lower Hudson River LTI buoy number 25, I think that is correct, and ask if you can identify this file.

"A This would be a copy of the work sheets in the lower Hudson River lighted buoy 25."

MR. KIMBALL: I'd like to interrupt for a minute. I'd like to submit the buoy file we have been referring to in the subsequent questions as an exhibit. Would you prefer I do it now?

THE COURT: Yes.

MR. KIMBALL: The document which Captain Hallock identified as work sheets for the lower Hudson River lighted buoy 25 has been premarked Red Star 27 for identification.

I would like to offer it in evidence. Are there any objections?

MR. BESHLIAN: No objection.

MR. SCHULMEISTERS: No objection.

(Plaintiff's Exhibit 27 received in evidence.)

MR. KIMBALL: I skip in the deposition to page 66 where the examination by Mr. Kimball resumes:

"Q Captain, who prepares these aids to navigation work reports?

"A These are prepared by the unit that performs the maintenance or corrects the discrepancy.

"Q Does your office receive reports of groundings or other casualties in the area of buoys in your district?

"A If these are sent by message, we receive a copy of them, yes.

"Q Do you know if your office has received copies of reports concerning groundings at the area of buoy 25?

"A We -- yes.

"Q Where would those records be kept?

"A Those pertaining to this particular buoy would be in this record.

"Q Have you had an opportunity to review this file recently?

"A Yes."

MR. KIMBALL: Skipping to page 68 at the very bottom:

"Q Captain, does that file contain any report of the grounding of the barge New London?

"A No.

"Q Has your office received reports from any source of other groundings besides the grounding of the barge New London at the vicinity of buoy 25?

"THE WITNESS: (To Mr. Schulmeisters) May I refer to you for a minute?

"MR. SCHULMEISTERS: (To witness) The question is has your office received, to your knowledge, any other reports.

"THE WITNESS: I need a definition.

MR. SCHULMEISTERS: (To witness) All right. Ask him what he means by any other reports. Ask him to clarify the question.

"A I request a definition of what you mean by 'reports.'

"Q By reports, I mean has your office received any communications, either oral or written, from any source indicating groundings of buoy 25.

"Does that clarify your understanding of the word 'reports'?

"A Yes.

"Q And I wonder if you can tell us what other reports you have received concerning other groundings.

"A The request for my appearance here."

THE COURT: This 15-minute reading of yours has now lasted for half an hour. How nearly done are you?

MR. LOSQUADRO: I would say we are more than half done. Five minutes, I guess.

THE COURT: All right. If you can do it in five minutes, all right.

MR. KIMBALL: Page 70, Mr. Losquadro interjected, "reports has been defined as any information, communication, oral or written."

"(To witness): Are you aware of any other incident other than the New London incident?

"THE WITNESS: Yes.

"MR. LOSQUADRO: (To witness) Would you itemize what those incidents were by date and vessels involved?

"THE WITNESS: I couldn't do that by date. My understanding was the Coast Guard cutter Sassafras."

MR. KIMBALL: Skipping to the middle of page 71:

"Q Do you know of groundings of other vessels besides the Coast Guard cutter Sassafras?

"A Through information in the office, namely a discussion, verbal information from other staff members would have been there, I understand the Coast Guard cutter Sauk was involved."

MR. KIMBALL: I skip to the bottom of page 71:

"Q Captain, do you know of any other groundings besides the Coast Guard cutters Sauk and the Sassafras at buoy 25?

"A The one concerning my appearance here is the only other one I am aware of.

"Q Do you know if the grounding of the Coast Guard cutter Sauk occurred in winter months?

"A My understanding was she was icebreaking at the time."

MR. KIMBALL: Skipping down the page:

"Q All right.

"I would like to ask you to go through Exhibit 2, identify certain of the reports which are contained in there and state for the record what they report concerning buoy 25.

"I would ask first that you look at a report dated February, 1972."

MR. KIMBALL: I am interjecting what is referred to as Exhibit 2 in the exhibit has just been marked as Red Star 27.

MR. SCHULMEISTERS: Excuse me, why don't you read the lines in between.

MR. KIMBALL: Because I chose not to, to speed up matters.

MR. SCHULMEISTERS: Your Honor, I object.

THE COURT: Only if it is necessary to understand the questions after it.

MR. KIMBALL: It is entirely unnecessary, your Honor, but to prove that I will read it to you:

"MR. SCHULMEISTERS: By month?

"MR. KIMBALL: I am sorry, March, 1972. It is tough to convert to the Julian. It is dated 2089."

MR. SCHULMEISTERS: There is a change from

February to March, your Honor.

"A The work sheet dated the Julian date of 2089 was occasioned by the seasonal change of the buoy 25.

"Q Does that report indicate that buoy 25 was off station?

"A It does.

"Q Does the report indicate the cause of the condition?

"A Ice.

"Q I would ask that you refer to a report dated 1350."

MR. KIMBALL: Skipping to the middle of the page:

"Q Can you tell us what that report indicates about buoy 25?

"A This was also occasioned by a seasonal change.

"Q Does that report indicate that the buoy was off station?

"A Yes, it does.

"Q Does the report indicate the cause of the condition?

"A It states the cause was unknown."

MR. KIMBALL: I skip to page 74, question at the bottom of the page:

"Q I would ask that you refer to a telex which is dated March, 1970. I believe it is dated March 12th at 0870 hours."

MR. KIMBALL: Skipping to the top of 75:

"Q Can you tell us what this telex indicates about the condition of buoy 25?

"A This is a safety voice broadcast and was issued reporting that the lower Hudson River lighted buoy 21, winter replacement in sinking condition, will be corrected.

"Q And it is correct that the buoy which was then marked 21 was later on remarked number 25?

"A That's correct.

"Q I ask that you turn to a telex dated, I believe, February 6, 1970; perhaps it is 26, my copy is unclear."

MR. KIMBALL: I skip to the bottom of the page:

"Q Would you state for the record the date which appears on the telex we are referring to?

"A 23rd of February.

"Q 1970?

"A 1970.

"Q What does this telex indicate about the condition of buoy 25?

"A This indicates that the lower Hudson River lighted buoy 1874 is missing from station, will be replaced."

MR. KIMBALL: I skip to the bottom of page 76:

"Q I would ask that you turn to a telex which is dated, I believe, March 8, 1969.

"A It would be 081815 Zulu, March, 1969.

"Q Captain, what does this telex indicate about the condition of buoy 25?

"A Found lower Hudson River lighted buoy 21, light list 1874, low in the water."

MR. KIMBALL: Skipping two lines down on page 77:

"Q Exhibit 2 contains an aids to navigation work report dated 9012. I wonder if you can locate that.

"A Yes.

"Q Can you state for the record what this report indicates about the buoy?

"A The reason for the report was a temporary change and the work performed column indicates that it was discontinued and that's amplified in the remarks.

"Q What do the remarks indicate?

"A Temporarily discontinued to expedite salvage operations Coast Guard cutter Sassafras.

"Q Would this be a reference to the grounding of the Coast Guard cutter Sassafras you mentioned previously?

"A I would think so."

MR. KIMBALL: I skip to page 78, bottom:

"Q I wonder if you would turn to a telex which is dated February of 1968. The exact date would be February 5, 1969."

MR. KIMBALL: I move to the top of 79 --

MR. SCHULMEISTERS: Aren't you going to read the answer?

MR. KIMBALL: The answer was: "It would be 051856 Zulu February, '68."

"MR. LOSQUADRO: (To witness) That is correct.

"Q Please state for the record what this telex indicates about the condition of the buoy.

"A Safety voice broadcast, lower Hudson River buoy 21 light list page 245 reported missing from station, will be replaced."

MR. KIMBALL: I believe that's it, your Honor.

THE COURT: All right. We will recess for lunch now and continue in an hour.

I suggest to you, Mr. Schulmeister, you can, of course, read other portions of this deposition or you can produce the witness live. There are two aspects of his testimony that I need clarification on.

If it's already in the transcript or if it's going to come in through some other witness, all right, but one point he said was that they didn't do any observation of the aids, they just serviced it twice a year. I believe you will find that since they are breaking ice in the Hudson in good portions of the water, and since they are probably using WAG also, which would include the Sassafras and the Fire Bush, that those ships are auxiliary ice breakers as well as being buoy tenders.

That's a matter that I think should be explained because if they are breaking ice they can observe aids at the same time.

The second aspect that I am interested in, there was a lot of questions about various kinds of lights and ranges that could be established there. I didn't hear any testimony concerning the feasibility of putting a tower type buoy on those rocks as to whether or not it could withstand the ice flow during the winter.

Both of those are areas of evidence that I'd like to hear something about.

MR. KIMBALL: There is a remark about the latter question, your Honor, and if you'd like me to take a minute, I'd like to read that question and answer.

THE COURT: Yes.

MR. KIMBALL: This is at page 40 of the transcript. It's in the middle of the page. The question was:

"Are there any other types of fixed structures which are used by the Coast Guard as aids to navigation?

"A Well, we will use metal pipe which is very similar, I am sure you realize, and we have had the same experience.

"My point is that the only fixed structure which would remain there would be similar to a lighthouse, but normally in the case of replacing a buoy, we would use a piling, and we haven't found them to be as effective as the unlighted buoy or what we call the ice buoy."

THE COURT: That's a pretty confused answer, and I am not certain that I entirely understand it.

MR. SCHULMEISTERS: There are other questions that piles would be sheared off, and I will probably have additional testimony from --

THE COURT: How much more do you have?

MR. KIMBALL: I have one paragraph. It is on page 95 at the very bottom:

"Q Captain, can you tell us what department in the Coast Guard receives reports of casualties involving vessels?

"A That would be the marine inspection office in the nearest major port or the office that has jurisdiction in the area that the accident took place.

"Q If the casualty involves an aid to navigation, would the marine inspection office send a copy of that report to your office?

"A Of the investigating report?

"Q Yes.

"A No."

MR. KIMBALL: Thank you.

THE COURT: We will resume in an hour.

(Luncheon recess)

- 2

Prince
nited States
v. 3358
v. 5801
7
Goettel

AFTERNOON SESSION

2:30 p.m.

(Trial resumed)

THE COURT: Mr. Schulmeisters, do you wish to read portions of that deposition?

MR. SCHULMEISTERS: Yes, I do, but I will also call Captain Hallock, H-a-l-l-o-c-k, as a witness.

THE COURT: I think you can really only do one or the other, but you can read portions of that deposition which explain answers read by them and call him, but you cannot read unrelated portions of those not necessary for explanation and call him.

MR. SCHULMEISTERS: I certainly intend to call him, and I think the ones I intend to read would be in explanation. If any one of them is not an explanation, if you so rule, we can strike that one.

THE COURT: I suppose there is no need to be too technical about it.

MR. SCHULMEISTERS: I don't want to waive my right to call Captain Hallock.

THE COURT: Confine yourself to those portions which explain the portions read by plaintiff.

MR. KIMBALL: We can't object to that.

MR. SCHULMEISTERS: The first one is page six, and rm/lf

this is Mr. Kimball finished reading, just before the next to last question, bottom of that page, and the prior question dealt with Captain Hallock's duties and what he was overseeing.

"Q You mentioned Aids to Navigation operating units.

"A Yes."

THE COURT: We have a Coast Guard captain in court and that is not Captain Hallock?

MR. SCHULMEISTERS: No, that is Captain Glass.

"Q Can you tell me what those units would consist of?

"A We have buoy tenders, both seagoing and inland buoy tenders; we have what we call ANT units, these are shore-based aids to navigation teams, all of enlisted personnel, and then we have on some Coast Guard stations individuals who are tasked with aids to navigation assignments, but they're not labeled as an ANT.

"Q I see. Perhaps you can tell me what the different duties of each of these divisions would be. What would make the ANT units different from the buoy tenders?

"A The seagoing buoy tender services and maintains the large floating aids, our buoy size goes to nine feet in diameter and 38 feet in length, and then the inland buoy tender, and they work in what we call exposed locations.

"The inland buoy tender works in some exposed locations which would be basically what we call the eight-foot buoys. That means they're eight feet in diameter.

"The ANT units operate usually with a buoy body of some type. In this district we have two different types, we have a 46-foot, what we call a BUSL"--

MR. KIMBALL: I think he is going a bit beyond the subject of the direct.

THE COURT: I can't really tell yet where this is going.

Continue.

MR. SCHULMEISTERS:

"Q Is that an acronym for something?

"A Buoy body stern loading. Then we have a 45 BU which works with a crane up forward.

"Q Do these vessels have names?

"A The buoy tenders would have names; the buoy bodies would have just numbers."

The following questions then were read by Mr. Kimball.

Going to page 9, on the bottom of the page, Mr. Kimball finished with an answer and it continues this way.

"Q I see.

"A So to answer your question, yes, there would "be different criteria, depending on what area of the Hudson River you would be in."

On page 25 and page 26 Mr. Kimball read the last question and answer, went to page 26, then he skipped one question, and I want to add that in there:

"Q Is there any aid to navigation available that you know of which indicates that there is a seasonal change at this location?

"A Yes, the light list would indicate a seasonal change at this station."

On page 33 there is a question of ranges and prior to that there was a question about a buoy being under ice, and on page 33, following the last question and answer read by Mr. Kimball:

"Q If the can buoy 25 was under the ice and not visible to a passing vessel, would there be any means available to such a passing vessel to locate the rocks which are marked by the buoy?

"A As a matter of practice, basically we set down what we call a danger bearing on the fixed light at Con Hook."

MR. KIMBALL: I object to that. He is trying to use the witness as an expert in navigation and the witness was never qualified in that capacity during the deposition.

In any event, I think it is irrelevant since later on he said he didn't see a light for Con Hook.

THE COURT: Read on a little bit and I will tell you whether to go further.

MR. SCHULMEISTERS:

"Q Would the fixed light at Con Hook be visible, let us say, one-half mile below buoy 25 on an overcast night?"

Then there is a colloquy --

MR. KIMBALL: In which Mr. Schulmeisters objected to the question, your Honor.

THE COURT: He is now withdrawing his objection.

MR. KIMBALL: Do you withdraw your objection?

MR. SCHULMEISTERS: Yes, but the objection was with respect to what he means by an overcast night.

Finally, on page 34 Mr. Kimball restates the question:

"Q Let us assume a very clear night. Would the light at Con Hook be visible one-half mile below buoy 25, if you know? If you can tell us what the range of light at Con Hook is, I would be very happy to get that.

"A Again I would have to refer to the light list and to the engineering reports. I can only give you an opinion. These lights -- for instance, the range of visibility at Con Hook will depend on the size of lamp that's in 'there.

"Also, I would like to correct that statement about a fixed light. I meant to say a light on a structure. It is not a fixed light, it is a flashing light. I would have to look up the lamp size and refer to the light list before I could give you an estimation on range. However, most of the [illegible] lights or light structures certainly on a clear night I know I can safely say definitely would be visible one-half mile below buoy 25."

MR. KIMBALL: Your Honor, I object, not because I disagree with any of the statements the man might have made, but he is going way beyond the direct examination.

THE COURT: I think it ties in a little bit with your idea that they should put a range in there. He is saying in effect that Con Hook Light can be used as a danger bearing, which is akin to a range.

MR. KIMBALL: I object to the use of the witness as an expert on navigation.

THE COURT: He is an expert on aids to navigation.

MR. KIMBALL: That is something a navigational expert would be able to testify --

MR. SCHULMEISTERS: If that is his objection, portions that --

THE COURT: Is there any more you were going to read?

MR. SCHULMEISTERS: Yes. Page 38, questions by Mr. Kimball.

"Q Captain, I believe you stated that the reason a can buoy is used to replace the lighted buoy is that the lighted buoy is more susceptible to drifting away in an ice flow. Is that a correct understanding of the testimony?

"A That is correct.

"Q In your opinion, is there any type of buoy which could be placed at the location we are discussing which would be less susceptible of drifting in an ice flow than a can buoy?

"A No, not at the present time.

"Q I see. Would a fixed structure be less susceptible of drifting in an ice flow than a can buoy?

"A The problem we have had" --

MR. KIMBALL: This is all irrelevant. The contention is not that the buoy was drifting but that it was under ice.

THE COURT: Overruled.

MR. SCHULMEISTERS:

"A The problem we have had with structures in our experience in ice is that in relation, for instance, to a floating aid, specifically a lighted buoy, a structure probably would remain on the station longer than a lighted "buoy, but its range of time on station is comparable to that of the unlighted buoy. Again it would in this case, and the problem with a structure is when the ice does come down, if it does shear the structure, it not only fails to mark the area but has worsened the situation. Our experience has been that they're sheared off somewhat below the water level, and therefore you can reduce the depth of water over it, what you are attempting to mark.

"Q You are saying that a fixed structure in an ice flow would cause a danger of being displaced from its location?

"MR. SCHULMEISTERS: No, he said sheared off.

"A Sheared off. I'm sorry, I made an assumption here. I'm talking about pilings. If we were to take a pile structure and placed it there, we found that the structure sheared off, and when they shear off, they shear off just slightly below the water level so they become an even greater hazard than what we're attempting to mark."

That went over to page 40, on the bottom part. Mr. Kimball read the question and answer in the middle of the page and the last question is this:

"Q Is there any type of aid to navigation, not limiting ourselves just to buoys, which in your opinion could be used at the location of buoy 25 to minimize the "risk of a buoy moving or disappearing in an ice flow?

"A No. For the technology we have today, the seasonal buoy or ice buoy is still our best, because it is the most adequate marking of obstruction."

Pages 44, 45, Mr. Kimball read a question about the visits twice a year to the buoy and I would like to read the next questions on page 45:

"Q What functions are carried out during these visits?

"A Of course, as I mentioned, these are seasonal buoys, so in both visits an actual lifting takes place. In the springtime we would take an unlighted buoy and remove it and establish a lighted buoy, and in the early winter we would relieve the unlighted buoy with a lighted buoy.

"Q When the change is made, is the mooring maintained?

"A It is usually left to the discretion of the commanding officer. The mooring can remain for a period of two years or he could bring the lighted buoy on board, separate it from the mooring and establish the unlighted buoy on the same mooring, and vice versa, when the relief goes the other way.

"Q Do you know if there is ever ice on the Hudson River after April 1st?"

I will skip three lines, the comment I made -- do you want that read?

MR. KIMBALL: It doesn't matter to me.

MR. SCHULMEISTERS:

"A I wouldn't be able to say specifically that there never was.

"Q I see. Suppose a situation existed in which there was ice beyond April 1st. Would the seasonal change go on as scheduled, or would you be flexible enough to hold it off until the ice disappears?

"A We would wait for the ice to disappear."

Skipping to page 47:

"Q If you received a report that a buoy was under ice, what steps would be taken to correct that?

"A We would first issue the boradcast notice to mariners. We would then attempt to get to the scene if we possibly could. For instance, many times a buoy is reported under ice, it has actually been swept away, so we would check that as soon as we could to determine what actually occurred."

Going to page 48:

"Q What steps does the Coast Guard take to inspect buoys in winter months whcih are susceptible to ice accumulation? Does the Coast Guard --

"A When you used the term ice accumulation now, we use that term, which means that ice is forming on the buoy itself. This is a different situation than the ice flow in the river, so are you talking about ice forming on the buoy or are you --

"Q An ice flow in the river which might cause a buoy to go under the ice.

"A Okay. If the ice isn't so bad that we're unable to get a unit there when we receive reports that basically the buoys are going under the ice, for instance, or being cast adrift by ice, we will send a unit there to attempt to correct the situation.

"Now at times in the Hudson River, the ice will be so thick that we're unable to do it."

There was a question by Mr. Kimball and continuing on page 49:

"Q You testified previously, I believe, that a lighted buoy would be more likely to go adrift due to ice than a can buoy?

"A Yes.

"Q I wonder if you can tell me how you know that this is so.

"A Well, both computing it theoretically, computing the surface exposed to the ice, and from practical exper-

"ience where we have attempted to maintain lighted buoys in an ice area, and historically, we have just been unable to maintain them on station.

"Q Where have you attempted to maintain lighted buoys in winter months?

"A In my experience?

"Q Yes, in your experience.

"A My experience would cover the Delaware. It also covers Nantucket and Cape Cod, up in that area, and my actual experience where I was on a buoy tender and had responsibility for buoys and discrepancy changes and this type of thing.

"Q Are there areas in which lighted buoys are maintained all year round that you know of?

"A In the Third District?

"Q Yes.

"A Yes.

"Q Where are those areas?

"A Basically, for instance, Delaware Bay, the lower Delaware River, in -- let me see, I can't think of the name of that river, the one in New London -- Thames River; these areas are relatively ice-free, and we have no problem -- we have very few problems regarding maintaining lighted buoys there but if you're asking the converse of that, "there are areas like the Hudson River and some of the inlets on Long Island the the New Jersey coast.

"Q The last areas are areas in which you maintained lighted buoys?

"A No, the last areas, the inlets of the New Jersey coast and Long Island, we use seasonal buoys just as we do in the Hudson River, because we know we're not going to be able to maintain the lighted buoy.

"Q I am not sure you exactly answered my question."

MR. KIMBALL: Your Honor, we might as well submit the transcript, at that rate.

MR. LOSQUADRO: He is reading every word that has not been read in before, your Honor.

MR. SCHULMEISTERS: Not quite, your Honor. I an up to page 51.

MR. LOSQUADRO: Your Honor, we are going to break in an hour and ten minutes and we have a captain who is leaving tonight for the St. Lawrence Seaway and won't come back until next winter and we would like to put him on.

THE COURT: How much more time do you need for reading?

MR. SCHULMEISTERS: I imagine as much as a half hour.

water in the St. Lawrence River and when the ice comes it comes very rapidly and they remove the navigation aids, and in the Hudson they can get caught also in a severe winter and the ice builds up and flows down due to the fresh water as far down as Newburg, and south of Newburg you have brackish water and as the ships go up and down they break up the ice and it keeps flowing up and down with the tides.

Q Having navigated both bodies of water, is there a similarity other than in ice conditions between the Hudson River and the seaway, from the standpoint of navigating?

MR. SCHULMEISTERS: I think that is leading, your Honor.

THE COURT: Overruled.

A You use fixed landmarks, yes, and you don't rely on the buoys. You have to have known points to turn.

Q I am thinking more of the configuration of the river, the width of the water --

A They are both constricted waters. It is a tight, tough piece of pilotage.

Q What types of vessels do you pilot?

A Lakers, up to -- where?

Q In the Hudson River.

A Gulf tankers, Texaco tankers, that regular type of tanker trade that goes on in the winter from here to Albany.

Q On the northbound leg, are those vessels normally loaded?

A You are restricted in draft in the Hudson. To arrive at Albany with a 31 foot draft the ship was lightened before you get there, either at Stapleton or New Haven, or wherever the last port is, and they will continue on up the river in a semi-light condition, half loaded, partially loaded.

Q What was the draft restriction you mentioned?

A 31 feet.

Q Are these ocean-going vessels, sir?

A Ocean-going vessels, yes, sir.

Q In your career, have you ever worked on board tugs?

A Yes, I have.

Q How long ago has it been?

A Well, in 1952 I was captain of a tug running the Hudson River from New York, the Erie Canal, and the Lakes down to Ogdensburg, New York, and Montreal.

Q Have you done it since then?

A Occasionally. I think about three years ago was the last time I have run the Hudson River.

Q On a tug boat?

A On a tug boat, yes.

Q Do you have the chart in front of you?

A Yes, sir.

Q Captain, this case involves the body of water north of Bear Mountain Bridge up to what has been described as Con Hook Island. I would like to ask you how you normally navigate that stretch of water if you are on a northbound vessel.

MR. SCHULMEISTERS: May we come up, your Honor?

THE COURT: Yes.

MR. BESHLIAN: Your Honor, I would think in view of the variety of the vessels that the captain --

THE COURT: The question should be confined to a tug pushing a barge about 300 foot in length and a width of, what was it, 48 feet?

MR. LOSQUADRO: Let me ask him if he would do it any differently.

Q You just heard the colloquy, Captain, and the questions I am going to ask you about navigating up this area, I would like you to tell us if your answer would be different if you were operating a tug pushing a barge.

A No, the function is the same, whether it is a big ship, small ship, tug, barge, single unit or a tow behind you, and the navigating is the same.

Q If you were taking a vessel or tug and barge northbound through Bear Mountain Bridge, could you tell us how you would do it and what aids you would use, if any --

MR. SCHULMEISTERS: What time of the year?

THE COURT: Wintertime at night, limited visibility --

MR. LOSQUADRO: I will break that down, your Honor --

THE COURT: Two miles visibility.

MR. LOSQUADRO: That will be my final question.

Q Assuming you did not have a visibility problem, how would you do it?

A Normally when you come up here and clear this ten-foot spot here and line up for the bridge, you always have in mind, you are thinking ahead, if someone is coming down you can't see him and you blow the proper signal and if it is at night you flash the light on both sides so anyone up above can see you coming down --

MR. KIMBALL: When you say "here," name the place, please, for the record.

THE COURT: He has been directing himself to just short of the Bear Mountain Bridge. As you come under the bridge, what do you do?

THE WITNESS: You have made a security call before you get here and if you don't get any response from your security call and you don't get any answer from your whistle and no answer from swinging your searchlight, you semi-assume that the passage is yours and you are clear. You come under the bridge, go north awhile here until you get on the range with Sugarloaf Hill, then you line up Sugarloaf Hill and ride up on that.

Q Do you use Sugarloaf Hill to steer on it?

A Yes, sir. It is a pinnacle and a very good marker.

Q When you do that, do you use this can buoy?

A You look for it. You know in your mind, in your stored information in your mind, that there is an obstruction there and you look for it. Naturally you are going to see it with the height of a big ship a lot quicker than 20 feet above the water on a tow boat.

Q How about Con Hook Light, assuming you had Sugarloaf Hill in view, would you use Con Hook Light in any way and, if not, say so and, if so, how would you use it?

A I am coming up under the conditions that exist in this case that you have on hand here --

Q Well, first in good visibility.

A I am coming around, lining up here and lining up on Sugarloaf Hill. At this point here, on the tug and barge, I would not be able to see that -- for the Montgomery --

Q I am saying on a ship or a tug, and to the extent your answer is different for a tug, say so --

A There has to be a difference. When I arrive here to line up on Sugarloaf Hill, if I am on a ship I can see the light, but on a tug I cannot see the light.

THE COURT: What point on a barge 20 foot high would you expect to be able to first see Con Hook Light on a clear day, clear night?

THE WITNESS: I would say about when I am abeam of Mystery Point. I am not looking for the light here, I am lined up on that hill and my concern is clearing Mystery Point and when I clear that and shortly thereafter, the light will appear. You have to be way down in this area before that light shows up (indicating).

Q I want to relate it to this case and I want to do it slowly:

Captain, we have had testimony in this case that the conditions existing on this night were the following:

There was visibility of two miles, there was an ebb flow, it was dark and overcast --

THE COURT: Light snows.

MR. LOSQUADRO: Well, flurries is the testimony.

Q In your estimation, would Sugarloaf Hill come into view?

A On a dark night, no. You would have to be up pretty close to it.

Q Under those circumstances, on a ship, what would you do -- on a ship --

THE COURT: Why a ship? We are dealing with tug.

MR. LOSQUADRO: I am trying to make a point on this, sir.

THE COURT: Go ahead.

Q Have you had occasion recently to observe that light in day and at night from south of it, Con Hook Light?

A Yes, I have.

Q Could you describe, if you would, the terrain on Con Hook Island?

A Con Hook Island is a big rock and it is ~~up~~ a lot higher than it shows here, and it doesn't show any elevation of the rock, but that light is 46 feet above water at mean low water on the eastern seaboard, which is mean low water at this height also. That light is on a rock and on top of that rock the light is built, which makes a total of the rock and light of 46 feet. The structure of the light I don't think is more than 25 feet -- that is the cement base plus the steel structure plus the lens.

Q Are there trees on that island?

A Yes, trees and bushes growing all along here.

Q You indicated you were there this week on a ship.

A Yes. The Gulfcrest.

Q Where were you piloting from?

A From New York, northbound.

Q No, on the ship.

A In the wheelhouse, on the bridge of the ship.

MR. BESHLIAN: I don't think any of this is relevant to February, 1974, your Honor.

THE COURT: I don't know where this is going yet, so we will have to see.

Q On the northbound leg, did you have occasion to observe Con Hook Light and what time of day was it?

A When we went north on this last voyage on the ship, we went north and it was night and we came south and it was daytime.

Q On the northbound voyage, did you see the light?

A You can see the light soon as you line up here for Sugarloaf Hill.

MR. SCHULMEISTERS: You pointed to Fort Montgomery and you can see the light?

THE WITNESS: On a ship, about 55 feet above water.

Q On the downbound voyage --

A That was in the afternoon, five, six o'clock, late afternoon, and it is daylight, of course, and coming down there are trees growing on both sides of this and there are branches which extend past the light on that Con Hook Light.

Q After passing south --

MR. SCHULMEISTERS: Your Honor, I must move to strike that because whatever has happened last week is not the same as 1974.

THE COURT: I don't know where this is going yet. Please, Mr. Losquadro, get there.

Q Did you have occasion to observe the light after you passed south of it on the southbound voyage?

A Yes, I looked at the light coming down.

Q Were you able to see the tower?

A Yes, you can see it.

Q Was there anything obstructing your view from the ship you were on on the tower?

MR. SCHULMEISTERS: Objection, your Honor.

THE COURT: We keep hoping we are going to get somewhere.

A There are branches around the tower.

Q Based upon your observation, do you have any estimate or opinion as to whether or not those branches would constitute an obstruction from a lower height of eye above the water?

MR. SCHULMEISTERS: Objection.

THE COURT: I will sustain that. We are going about this thing in the most roundabout fashion.

Captain, you have navigated up this river many times in the winter and you have done it occasionally on tugs and you pointed out that because the tug is lower in the water you have to get up to Mystery Point before Con Hook Light comes into view.

THE WITNESS: Right.

THE COURT: In the wintertime when the deciduous trees are not growing and all you have are the pines, is there any obstruction once you reach Mystery Point to seeing the Con Hook Light?

THE WITNESS: No. You can see the light but there are branches in front of the light, but you can see the light but it could be partially obstructed with light branches, not tree trunks, or that, but branches around the light.

THE COURT: All right.

Q Had you been up there in 1974, Captain?

A Yes.

Q Were you able to make that observation at that time as well?

A In 1974, I was in ships again and, as I stated, there is no problem when you are up high.

Q Your observation of the brush and trees which you testified about, would they be any different than the observations you made in 1974?

MR. SCHULMEISTERS: Your Honor, I object.

THE COU[illegible] I will allow it, but he asked it backwards.

Were the same trees growing in front of the light in 1974 as you saw there last week?

THE WITNESS: There have been branches of trees growing around the light ever since I can remember sailing up there.

Q Do you know what a danger bearing is?

A Yes. If you pertain to sailing offshore --

Q What is your understanding of a danger bearing?

A A danger bearing is a question you get for your examination for third mate, second mate, chief mate, master -- it is a part of navigation. When you are sailing the coast and you want to pass a certain distance off a certain object or a shoal or a danger to navigation, you draw a danger bearing that will keep you clear, a position that will keep you clear of the obstruction, and you know if you are heading north and you go to the west of it, you are in the danger zone. You know if you are above that bearing, why, you are in the clear.

Q In your opinion, would a danger bearing have any usefulness on approaching Con Hook from the south?

A I have never used one and I have never observed anyone using any danger bearing on Con Hook or in any of the inland waters.

Q If Sugarloaf Hill was obstructed to you on a dark night, an overcast night, with two-mile visibility, how would you navigate? What would be your principal --

A A two-mile visibility? That wouldn't obstruct my navigating anyway. I would navigate the same as I always do, by reference to the shore marks, the points, Point Mystery, the contour of the shore --

THE COURT: We also assume there are substantial ice build-ups on both shores and particularly around Mystery Point.

THE WITNESS: I take a peek at the radar once in awhile but it is not too good to rely on in the Hudson River, especially where you have two mountains on each side, you get fluctuating targets on your radar and it may show you that you are all right in the middle, but the shoreline is not where you think it is. It is deceiving.

Q During the ice season on the ebb tide, would ice have a tendency to build up north of the Mystery Point on the east shore?

MR. SCHULMEISTERS: I object, unless you qualify him that he has been there in the wintertime --

THE COURT: He testified he has been there during the winter for a number of years.

Q Does it have a tendency to build up north of Mystery Point on the ebb flow?

A Yes. There is a pocket there that builds up ice.

Q Is there in your opinion a possibility or probability -- as you used the word -- that that ice would appear on a radar as shoreline?

A Certainly there is.

Q Captain, back to the chart again, you described a series of aids that are in use on the seaway and I ask you a question: in your opinion, is a range, whether a dual lighting range or a sectorized range --

MR. SCHULMEISTERS: I object, your Honor --

THE COURT: Wait until the question is done.

Q Would it be useful as an aid to navigation in the vicinity of Con Hook Rock and, if so, where?

MR. SCHULMEISTERS: Objection, your Honor. We do not have this man qualified yet as an aid to navigation expert.

THE COURT: That is your only objection?

MR. SCHULMEISTERS: May I have voir dire on this?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. SCHULMEISTERS:

Q Captain, have you ever had any experience in working with aids to navigation?

A What type of work on the aids do you mean, setting them up --

Q Yes.

A We have safety committees in the St. Lawrence River that meet every so often and all the persons that are in charge of the lights, placing of the navigations, meet with the pilots and discuss where we need additional aids, what is best for the safe navigation of that area, and usually they follow our suggestions, because we are the ones who are doing the work.

MR. SCHULMEISTERS: Your Honor, may I have my question read back, please?

THE COURT: No. I think he answered it fairly enough.

MR. SCHULMEISTERS: I think it is not responsive and I move to strike it.

THE COURT: I think it is responsive. You may have also been asking whether he ever physically installed buoys or removed buoys, and I gather the answer to that, unless he served in the Coast Guard, is no. Having done it, I can tell you it is no great thing.

THE WITNESS: I have not done that. The only part that we have is where do they go, where do we need them, where will they do the most good.

Q Have you made any suggestions to anyone personally with regard to aids to navigation in this area, Bear Mountain Bridge --

A No, I have not made any suggestions.

MR. SCHULMEISTERS: No further questions.

THE COURT: Put your question to the witness, but it seems to me it has to be preceded by establishing two other things, and the first is, in your experience during the winter navigating these waters have you had occasions on which buoy 25, which used to be buoy 21, was obscured by ice flows?

THE WITNESS: Yes. Getting back to my point of navigation up here, when I get to Mystery Point, that is the last thing I scrub out of my mind. I got by that danger and I am on my steering point and I know my next danger is here (indicating) and I also know many times it is under the ice and you don't see it, but I know it is there and I get to worry about it if I don't see it because the aid to navigation then becomes an obstruction to navigation. I don't know whether it has been carried away or what and I am concerned should I run across this buoy and tangle it in my wheel I am out of commission and will have an accident.

THE COURT: Do you believe a different type of aid to navigation should be installed during the winter months?

THE WITNESS: My personal belief of this problem here, yes, I think something can be done with that.

BY MR. LOSQUADRO:

Q In your estimation and opinion, Captain, could a range, either a dual light range on two towers --

MR. SCHULMEISTERS: Objection.

THE COURT: Don't suggest answers to him. Just ask him questions.

Q Could a range --

MR. SCHULMEISTERS: Objection, your Honor.

THE COURT: You are putting answers in your questions.

MR. LOSQUADRO: All right.

THE COURT: In light of the problem as you see it, what type of aid to navigation could be used to correct the problem?

THE WITNESS: You could use two kinds: you could use a sectorized light, with a red sector and that would be an alteration of the existing light with all the obstructions around it removed.

THE COURT: That is changing Con Hook to a sectorized light?

THE WITNESS: Yes. The reason for that is, if you put a range, which is also helpful, up here where Sugarloaf Hill is and you don't see Sugarloaf Hill, you won't see the range. If you get close enough to see the sector and the light of Con Hook, you have it made, you have located your dangers and know exactly what you are doing.

THE COURT: Look at Con Hook light and if you draw a line to the east of buoy 25, which I would assume would be where your white range would commence, you wouldn't even come into that range until you were about where the figure 74 appears depth wise on the chart. Do you agree with that?

THE WITNESS: It would be a little bit west of 74 but I get your trend of thought, sir. Yes, it would be west of 74 and it would be on the west side of the channel and in the middle.

THE COURT: It is too far to the east side of the channel to be of any value. You wouldn't pick it up until you were virtually up on 25.

THE WITNESS: Well, sir, this is your problem with your Con Hook Light now. When you are coming southbound, from West Point, and you get here, Lady Cliff or Highland Falls, you steer right on that light and it is very good and you clear Con Hook and Mystery Point and you are all set, but when you are coming north, the light is in the middle of the island and you won't see it on a tug and a barge until it is too late to do you any good.

THE COURT: A sectorized light, if one were to be used, belongs on top of Sugarloaf Hill.

MR. LOSQUADRO: Your Honor, I don't think so.

MR. SCHULMEISTERS: May the witness mark that 74?

THE COURT: Yes.

THE WITNESS: This is a depth of 74 feet (indicating).

MR. SCHULMEISTERS: The captain has drawn a pencilled circle around 74.

MR. LOSQUADRO: I disagree, your Honor.

MR. SCHULMEISTERS: Would you label this with the letter E --

MR. LOSQUADRO: You can do that on your examination.

Q In your opinion, is Con Hook beacon an effective mark for the rock south of it, an adequate mark for the rock south of it, in its present location?

A It isn't any good to you the way it is now. It doesn't serve the full purpose of the light the way it is now. It services you halfway only. Southbound it is a beautiful light, northbound it is not that good for you, on a low elevation.

Q Did you say that a range would be useful on the east shore line?

MR. SCHULMEISTERS: Of course, your Honor, leading again.

A I have to go back to his Honor's question here. He asked me if a range or a light would be useful in helping it, and it would, but in preference you would have to take all the problems in view. If you go to the Coast Guard and want a light in or the Seaway Authority, first of all they talk about funding and usually it stops there. Just to guess on where you are going to put it, you want to put it in the most feasible place where it will do you the most good on the view of a mariner, and you don't always get that, sometimes you have to compromise.

THE COURT: If they had the money and were willing to do it, where should they locate the range?

THE WITNESS: Your range would have to be in line with Sugarloaf Hill.

Q Could it be closer to the vessels heading northbound?

A It could be established on the south side of Con Hook.

Q No, on the easterly shoreline, could it be established directly across the river from Con Hook Island?

MR. SCHULMEISTERS: I object, your Honor, because he already asked the question could it be closer and the answer was on the south side of Con Hook Island and now he is trying to get a different answer.

MR. LOSQUADRO: I am not sure he understood me, your Honor.

THE COURT: I will allow it.

Q Could the range lights, or a sector range, be established on the east shore directly across from Con Hook Island, close to water?

A The range lights would have to be established to get the most effect, on the same line with Sugarloaf Hill, because that is the middle of your channel, that is where you want to be, unless you are meeting someone, and if you have them too far to the south, you have lost your range and, as his Honor said, you are heading ashore too quick.

Q Would you take the parallel rule, Captain, and lay out for me a course you would be on if you steered on Sugarloaf Hill? I am not so much concerned with what the heading would be, but I would like to see the line on the chart.

Would you mark that on the line?

THE COURT: The heading appears to be 23?

THE WITNESS: No, it is 38. That is as close as I can come to it.

THE COURT: That is 38 magnetic. You were not reading true there.

THE WITNESS: I wasn't?

THE COURT: No, unless I cannot see the numbers -- no, you are right, I can't read the numbers. I am too far away.

Q Did you intend to put that line through the highest peak of Sugarloaf?

A Right on the pinnacle.

Q Could range lights be placed somewhere along this line, and I am pointing to the course you just put down.

MR. SCHULMEISTERS: Your Honor, I object.

THE COURT: Overruled.

A Sure they could.

Q Could they be placed close to the water?

A Sure they could. There is a railroad track there and there is a little land to the west of the railroad track.

Q Could a sectorized range be put there close to the shore, in your opinion?

A A sectorized range with three colors? Yes, it could be.

Q Could dual lights be used?

A Two range lights, yes.

Q If you steered on them, would that get you by the obstruction south of Con Hook?

A Yes, sir If you stayed right on from your position in midchannel, you would clear the 14 foot spot and it would take you clear of the obstruction and you start heading north and you are free and clear.

THE COURT: Let me suggest a much cheaper and easier way of dealing with the problem. The problem, as I see is, is that because of Mystery Point you do not dare hug the starboard too close, you have to give it reasonable leeway, and with ice, if you don't pick up buoy 25, you are not entirely certain when you have passed Mystery Point and what you ought to do is get past Mystery Point and bring yourself closer to the starboard bank. Would not [illegible] a light on Mystery Point which would tell you when you had come abeam of Mystery Point and cleared it accomplish the same thing and much more easily?

THE WITNESS: Well, it could, but it wouldn't give you this range (indicating) if you can see this one, you have it made --

THE COURT: The Mystery Point light would be cheaper and easier to maintain and while it wouldn't be as available as a range, it would accommodate the absence of buoy 25.

THE WITNESS: There are a few buildings along here and they have lights in the houses and as you come up here and you are clearing Mystery Point, there are lights already in here that will interfere, house lights, what have you, and there is a railroad track and a couple of trestles with red lights and sometimes they are lit and sometimes not, and there are creeks under the railroad tracks that have red lights and they could confuse you.

Q The aids we have been talking about, are they shore-based aids?

A Yes.

Q Would they be free from the effect of ice?

A Naturally.

MR. LOSQUADRO: Thank you very much.

THE COURT: Cross examination.

CROSS EXAMINATION

BY MR. BESHLIAN:

Q You said you sailed on a tug boat in 1952. What company was that for?

A I sailed for Oil Transfer and I sailed for Bouchard.

MR. SCHULMEISTERS: Who?

THE WITNESS: Bouchard.

Q This was in the Hudson River?

A Hudson River, Erie Canal. Great Lakes and St. Lawrence.

Q Did you have oil barges --

A That was our mail. In Connors we towed soda ash barges, molasses barges, gasoline, whatever type of trade they had.

Q So that you had some experience along the Hudson River as a tug boat?

A Yes.

MR. LOSQUADRO: As a tug boat?

Q When you started sailing on tugs, were you given special instructions with respect to the river and its peculiarities or pitfalls?

A Instructions in what?

Q By more experienced navigators. Did they advise you as to what to look for and what should be avoided and how to approach different situations that developed as you go through the river?

A I will have to start when I was decking, and I was interested in learning it, so naturally I spent all my off hours up there observing it and the old timers would tell you, "You look over here, that is the old Hudson Day Line pier," and they would point out different points of interest.

Q Did they point out points that you had to be careful about when navigating?

A You could see them by looking at the chart. It doesn't take any -- good eyes is all you need.

Q If you can look at a chart and you have good eyes, you don't need any experience to navigate the Hudson River?

A I am not saying that.

Q That is what I am asking you.

MR. LOSQUADRO: I object. What kind of experience, navigating experience generally or navigating on the river? I think the witness quite clearly answered --

THE COURT: Put another question.

MR. BESHLIAN: Your Honor, could I have that question read?

THE COURT: Read the last question.

(Question read)

THE COURT: There really is no question pending.

Q Do I assume you are saying all one needs to navigate the Hudson River in the wintertime, in the nighttime, when the conditions are restrictive, when there are snow flurries, all you need is a chart to go through there safely?

MR. LOSQUADRO: Objection, until he says whether or not the man is an experienced navigator.

MR. BESHLIAN: I assume he is an experienced navigator but not on that body of water.

THE COURT: What he is trying to ask you in a rather roundabout way is would you trust an experienced tug boat captain who had never steered these waters and maybe only traversed them once or twice casually as a deckhand to navigate under the conditions we have in this case?

THE WITNESS: I will have to go back to what everybody in the Coast Guard licensing, and the admiral and everyone else thought a couple of years ago, that is, that they had the grandfather rights laws and gave everybody a right to run anywhere the diesel tug takes them.

MR. BESHLIAN: That is not responsive, your Honor.

THE COURT: It is not, really. I am not asking what the Coast Guard allowed by virtue of grandfather clauses, because there were certainties and pressures involved in that that don't necessarily make for good seamanship, but I am asking if you owned the vessel or were in charge of the line, would you let a person inexperienced in these waters but otherwise an experienced tug captain make a trip at night in February with a lot of ice on the river and visibility of two miles and snow flurries.

THE WITNESS: Depending on the record of the man, the individual, the circumstances are the same no matter where you are. If it is bad weather, it is just as dangerous in the Hudson as on the coast or anywhere else, and to try to answer his question the first time, no one is born a pilot and the more experienced you get the better you are and the more comfortable you are. In any trade, the more you do it, the better you are, but I don't say you cannot do it by the equipment you have today. If a man has a good experience in tug boat handling and knows what he is doing and they have run all over the country -- there is always a first for everyone and he has to make his first trip also.

THE COURT: Would he not be better off if he were aware of the fact that buoy 25 often gets submerged in ice?

MR. LOSQUADRO: Well, your Honor, I don't know how many people knew that.

THE COURT: You are aware of it, are you not?

THE WITNESS: Yes. There are many of them that get submerged. You don't count on these, they are aids, not definite things. You look for them, you know they are there and if you don't look for them -- I would do the same thing that master did, I got up there, I couldn't see the buoy, I swung the searchlight, looked in the radar, did not see Sugarloaf Hill, slowed the ship down but was evidently in the wrong position.

THE COURT: I have to go to the argument of this

Q Yes.

A That might happen only once every hundred passages.

Q You wouldn't use radar at all if you had two mile visibility?

A Then I don't need radar, I can see bank to bank.

Q Then you can see Mystery Point as you came up to it?

A Of course.

THE COURT: Stop and assume there is heavy ice accumulation around Mystery Point somewhat obscuring where the point is and where the shore is, then what do you do?

THE WITNESS: Slow her down and navigate with caution and poke your head in the radar and see if you can find your position.

Q Can you tell me where the ice accumulations occur at Mystery Point, in the chart?

A In the berth above that hump on the chart.

Q It accumulates in there?

A Yes.

Q That is where your accumulation of ice is in there, and when you come up and can see visually two miles, you can see the shoreline from the boat at the point you marked X?

A Yes.

Q The ice accumulation doesn't affect your judgment at that point?

A In clear visibility, no. You are just worrying how thick the ice is and how your unit is acting, how it responds to whatever you want it to do.

Q Am I correct you stated before that if you had two miles visibility you would use fixed landmarks as opposed to a buoy for navigating?

A Definitely.

Q Why is that?

A You cannot trust the buoy. It may be off position, dragged out of position, not there or --

THE COURT: Suppose you are not familiar with the landmarks, then what? Then do you have to use the buoy?

THE WITNESS: I wouldn't use the buoy. I know it marks a shoal and in my mind it is there, but I wouldn't count on the buoy. If you want to know more about this buoy right now, it is out in the middle of the channel. When they repositioned it, they put it in the middle. I know it is there but it is in the middle of the channel and I have to go further to the east to clear it.

Q Your reply was that you wouldn't use that buoy?

A I would observe it and take a mental tabulation to it but I wouldn't navigate by a floating aid.

river before I got up in that.

Q If you would navigate through an area for the first time, or were advised, "We will go up river X," and you had never been up that river, what kind of preparations would you make?

A I couldn't answer that question for you because I have not been sent anywhere that I have not been before, because you have to make so many trips in the area to get pilotage and in order to get that, you have to study the area and make the trips and, therefore, you could not have been there before and you would have to be there for at least 12 round trips.

Q Would you take any test to get your pilotage?

A Yes. You take the normal tests regulated by the Coast Guard.

Q What does that test consist of?

A Whatever the examiner wants to give you. It would include aids to navigation, depth of the water, prominent land objects, and they ask you a lot of questions on safety also. They will even ask you about a fresh air breathing apparatus, which I don't know what it has to do with piloting, but it is one of the questions.

Q Would you have to sketch the contour of the river from memory?

A Years ago you had to. Now they give you an outline.

Q What do you have to put on the outline?

A You put the lights on the outline and cable areas, the distance and the depth of water on each reach.

Q Would you, for example, if you were concerned with this area, have to put on there the existence of that rock?

A That 14 foot spot?

Q Yes.

A At Mystery Point?

Q No, this one --

A Oh, definitely, you would never pass the exam if you omitted that one.

Q So a navigator going up that river should really know it is there?

THE COURT: No, we are talking about pilots now, pilots without a chart very often. He is supposed to have the chart in his mind.

MR. LOSQUADRO: Mate Reimer was well aware of the rock, from his testimony. I add that ground to the objection.

MR. SCHULMEISTERS: I object to the way the objection was stated, giving Reimer's testimony.

THE COURT: I object to wasting all this time. Let's move on.

Q I would like you to assume that you would navigate for the first time up some river. Would you then, before that, study the chart?

A I can't answer that because I can't assume it.

Q Well, you are here as an expert --

A I can't assume it. Either I do it or I don't. You are making up some kind of picture that doesn't fit into my life and I can't assume anything in my life, I have too much responsibility, I have to know what I am doing.

Q You wouldn't go up a river that you don't know?

A I couldn't possibly go up. I wouldn't be licensed.

THE COURT: As a pilot?

THE WITNESS: That's right.

Q Would you go up a river you had never been up before on a tug pushing a barge?

A Would I?

Q Yes.

A Depending on the river and how far I had to go and what the circumstances were. You would have to ascertain everything involved.

Q Would that include looking at the chart?

A Of course.

Q Would that include looking at the Coast Pilot?

A Of course.

Q Would that include looking at the light list?

MR. LOSQUADRO: Why don't we put it in evidence if he is going to read from it.

THE COURT: Presently it is being marked for identification.

MR. SCHULMEISTERS: As far as I know, all that is is a draft without identification as to who wrote it and also without identification as to why it obviously never became an actual memorandum, if it ever did, and --

THE COURT: I will keep that in mind in reading it.

(Plaintiff's Exhibit 33 marked for identification.)

THE COURT: Can we now call a witness?

MR. LOSQUADRO: Charles A. Glass.

CHARLES A. GLASS, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LOSQUADRO:

Q What is your present address?

A Quarters 5, Gouverneur's Island, New York.

Q Are you a member of the United States Coast Guard and what is your rank?

A I am captain, United States Coast Guard.

Q How long have you been captain, sir?

A Since 1971.

Q What are your present duties with the Coast Guard?

A I am Chief of the Operations Division in the Third Coast Guard District.

Q Does the Third Coast Guard District include New York Harbor and the entire length of the Hudson River?

A Yes.

Q What does the Chief of Operations do and what are his responsibilities and what are his jurisdictions?

A Supervising six divisions including the Aids to Navigation Division. The other divisions are Search and Rescue, Intelligence and Law Enforcement, Communications, Boating Safety.

Q You said Aids to Navigation. As Chief of Operations with jurisdiction over Aids to Navigation, do you get involved with the daily work of the Aids to Navigation Section?

A No.

Q To what extent do you get involved?

A On important issues. On approval of changes in aids to navigation in which I have to go to the Coast Guard Headquarters. On major construction projects. The material is funneled through me for initialing prior to transmittal to headquarters.

MR. SCHULMEISTERS: Your Honor, I object. A copy of the file has been marked without any extractions up to I think some date in 1975. If it is in there, it is in there.

MR. LOSQUADRO: It is not. The New London incident and the George T. Tilton incident are not in there.

MR. SCHULMEISTERS: I think the captain already explained it primarily contains SANDS forms and you may have some messages in connection with aids.

I really don't see the relevance of inquiring why a buoy file does not have a file containing a drowning.

THE COURT: I don't know why we are going at it this way, but I do know it is going slowly.

Q Did you ever receive any information that the 25 can buoy during winter months was found on a fairly regular basis to be under the ice?

MR. SCHULMEISTERS: Objection.

THE COURT: Are you aware that there have been reports that buoy 25 gets inundated by ice during the winter months?

THE WITNESS: Yes, there are reports in that SANDS file to that effect.

A There is a report that the buoy was reported submerged during the month of March which would be during the thaw when the current would be rather high and when the tender went there, they found the buoy on station. That information comes from two successive SANDS reports.

So, the buoy, the winter buoy could be disappearing just because of the periodic high current and also with the overun of ice. Very much like the spar buoys up on the St. Lawrence River. It is a reasonable expectation.

THE COURT: I would expect if a buoy gets covered over with ice on an ebbing tide, that when the tide changes and the water starts running northward again, there is a good chance that the buoy would pop back up.

THE WITNESS: That is what happened.

MR. LOSQUADRO: Up there, that area gets more ebb tide than flood.

MR. SCHULMEISTERS: I object to that. There is no evidence of that.

THE COURT: I think it follows when you are dealing with a river with its own current, the current of the river to some degree offsets the tide and that the effects of the ebb, they are more pronounced than the flood.

Does that seem sensible to you?

THE WITNESS: Yes. I believe that is what happened in that particular instance I mentioned where it was reported submerged but found floating on station when the tender got there.

Q Captain, in evidence there is information that in 1962 or '63 the Coast Guard vessel SAUK had a casualty at the rock marked by the 25 can buoy, then known as the 21 can buoy.

A Yes.

Q Did any recommendations concerning aids to navigation come out of that incident?

A I don't know. I can see here a draft letter to the Corp of Engineers recommending that the rock be removed, and I might say there had been subsequent recommendations made by other agencies to the Corp of Engineers requesting the same thing.

THE COURT: What other agencies have requested it?

THE WITNESS: The State of New York; the Commissioner of Environmental Protection, Mr. Burley.

Q When was that?

A March or April of this year.

Q Did the Coast Guard do a study of prior casualties at that rock when the SAUK incident occurred, collect information on prior casualties at that rock when the SAUK incident was investigated?

MR. SCHULMEISTERS: Objection. The records are available. Unless he has special knowledge.

MR. LOSQUADRO: At some time the Coast Guard became concerned about this buoy?

THE WITNESS: Not so much concerned about the buoy. Concerned about the rock.

MR. LOSQUADRO: I think one goes with the other.

THE COURT: Why don't we get to the heart of it. We are fencing so with this captain.

Captain, you were in court yesterday and you heard the expert witness presented by the plaintiff who indicated that in his opinion the aid to navigation at buoy 25 is inadequate during the winter months since it is often obscured by the ice and he suggested that in his opinion it ought to be replaced or supplemented by a sectorized light or a range which would mark the channel in winter months without the risk of being obscured by ice.

During your tenure as Chief of Aids to Navigation or as Chief of Operations, has your command given any consideration to changing or replacing that particular aid?

THE WITNESS: During my tenure as Chief of Operations?

THE COURT: Or as Chief of Aids to Navigation?

THE WITNESS: Not as Chief of Aids to Navigation but as Chief of Operations, yes.

THE COURT: When?

MR. LOSQUADRO: I was going to get into this.

THE COURT: I have all of those files, he has all of those files. I would assume at the point they did this they made a review of the previous incidents, previous recommendations and previous files. That would be the obvious starting point; am I correct?

THE WITNESS: Yes.

THE COURT: At the time they made this consideration they reviewed all the prior files which are now in evidence here.

Why can't we go on from there?

Q Was the recommendation to the Army Engineers to level the rock to a depth of --

MR. SCHULMEISTERS: Objection.

THE COURT: Yes. You are again asking leading questions.

MR. LOSQUADRO: I can lead this witness. He is a hostile witness.

THE COURT: He is not hostile yet.

MR. LOSQUADRO: He is employed by an adversary party. He is here under threat of subpoena although we didn't have to subpoena him.

THE COURT: But he is also an officer in the Armed Forces and he has indicated no unwillingness to give you whatever information he possessed. Put the direct question to him.

Q What was the nature of the recommendation to the

Corp of Army Engineers?

MR. SCHULMEISTERS: Objection.

Q Did the Coast Guard make a recommendation to the Army Corp of Engineers?

A I don't know.

Q Look at the file. Does that refresh your recollection?

A This indicates whoever wrote this memo had clearly in mind the intent to ask the Corp of Engineers to move that obstruction to a depth of 30 feet. I don't know if this was ever transmitted to the Corp of Engineers. I could not find a corresponding official signed, dated letter.

MR. SCHULMEISTERS: Incidentally --

MR. LOSQUADRO: Your Honor, this is going slow but I am being interrupted many times.

THE COURT: Unless you have an objection, be quiet, Mr. Schulmeisters.

Q Was a recommendation made at that time to establish a shore-based aid to mark the obstruction?

MR. SCHULMEISTERS: Objection.

THE COURT: At what time?

Q At the time of the SAUK incident.

A I don't know.

Q Was there ever a recommendation by the Coast Guard to the Army Corp of Engineers, if you know, concerning depositing dredge material or riprap at the site of the obstruction?

THE COURT: What does riprap stand for?

THE WITNESS: It means large rock. It is just a term used for large rock.

THE COURT: I saw it in the map earlier.

THE WITNESS: It is usually large rock laid in a pattern, interlocking.

Q Do you know if the Coast Guard ever requested the Army Corp of Engineers to deposit dredge material at the site or near the obstruction marked by the 25 buoy?

A Not specifically. They did not request it specifically at that location. Our intent was to get the Corp of Engineers in connection with a dredging project, which included cutting some channel through rock, to take that rock and construct riprap structures to replace buoys at several locations.

Q Was this area specifically considered by the Coast Guard for the deposit of rock?

A This area has been used by the Corp of Engineers for deposit of rock for years and was not specifically suggested as one of the sites for the structure. I was thinking of midriver sites.

Q Did the Coast Guard intend to use rock material deposited by the engineers for the purpose of building another aid at or near the rock that we are talking about?

A That was not the specific intent. The intent was, if you will allude to a specific document, the intent is very clear.

Q Alluding to your deposition?

A No, specific letter to the Corp of Engineers asking for cooperation in deposit of rock riprap.

Q The Coast Guard did or did not --

MR. SCHULMEISTERS: I object.

MR. LOSQUADRO: I am not getting answers.

THE COURT: Stop and start again, Mr. Losquadro.

Q Captain, did the Coast Guard ever consider establishing a new aid at or near the rock presently marked by the 25 buoy?

A No.

Q Did they ever consider moving Con Hook Light to better mark the light now marked by the 25 can buoy?

A No.

Q They never did?

A No, otherwise there would be a project to that effect and there is no project.

Q So they never considered it?

A I could find no project.

Q It is your testimony today that the Coast Guard never conferred with the Army Engineers concerning the possible elimination of part of that rock?

MR. SCHULMEISTERS: Objection.

THE COURT: He didn't say that.

MR. LOSQUADRO: That is the impression I got.

THE COURT: He said he didn't know whether the Coast Guard had asked the Corp of Engineers to remove the rock.

Is that correct?

THE WITNESS: Yes.

THE COURT: You indicated you did make some sort of study of the problem at the site. When was that made?

THE WITNESS: That was made in response to a very recent letter from Mr. Burley in which he alluded to correspondence that he had with the Corp of Engineers in his capacity as Commissioner of Environmental Protection for the State of New York. He said that he had asked the Corp of Engineers to remove the rock and the Corp of Engineers had responded since the rock was outside the channel, that they could not remove it, it was outside the jurisdiction.

He then went on to ask if the Coast Guard would construct a structure on the rock and our response was contained in letter form which was signed on the 3rd of this month.

THE COURT: May, you mean? That is two days ago.

MR. LOSQUADRO: There is continuing correspondence to the government recommending the removal that --

MR. SCHULMEISTERS: What does he mean by "continuing recommendations"? Let him say who, what, when and how.

MR. LOSQUADRO: The legislature in Albany. We will put in such evidence.

MR. SCHULMEISTERS: To the Coast Guard here in the Third District?

MR. LOSQUADRO: Let me continue.

THE COURT: Continue.

Q Do you know or have any information at all on any suggestion, consideration or promise to move Con Hook Island light, the beacon?

A No. In a matter of discussion with you in testimony and also in deposition --

Q It certainly was discussed in testimony.

A In deposition.

Q Have any steps been taken to eliminate or otherwise alter that rock obstruction south of Con Hook Island?

A I don't know.

THE COURT: Any consideration ever given to putting in a sectorized light or a range light at that area?

THE WITNESS: I think there has been some current consideration within the last four or five months that I know of, but again, I believe this was in direct response to questions which were posed in the course of taking deposition.

THE COURT: I am obviously not talking about how it arises when you are asked about it.

Has the Coast Guard, its responsibility for aids to navigation, considered a project to install such aids at that site?

THE WITNESS: Not as a project, your Honor. Nothing more than a conversation.

Q Captain, did the Coast Guard ever conduct a study, a buoy to beacon study, the feasibility of replacing floating aids with fixed beacons?

A Yes, a Coast Guard-wide study.

Q When was that done?

A Approximately 1971.

Q Who did it?

A It was done in two phases. There was a contracted study performed by Booze, Allen and after that study was reviewed and more or less accepted by the Coast Guard, then the districts were asked to do follow-on studies to see to what extent the recommendations of Booze, Allen could be implemented.

Q What was the purpose of requesting the Booze, Allen study?

A It was manifold.

Q Let me rephrase the question.

Was the purpose, one of the purposes of requesting the Booze, Allen study to determine if there was a suitable alternative aid to a floating buoy in ice conditions; yes or no?

THE COURT: If you know.

A One of the conclusions of the Booze, Allen study. I don't say it was one of the reasons for starting the study. I was not party to justifying the study, but one of the conclusions of the study was, in ice-covered water where ice gets thick and flows, that it is not practical, it may not be practical to replace buoys with structures and for that reason certain areas were exempt --

Q You are not answering my question.

THE COURT: I want to hear the rest of it.

Conclusions concerning ice and buoys was what?

THE WITNESS: The conclusions were that in many locations, buoys could be replaced by structures at comparable cost, but in areas, specifically areas like the Hudson River where there was heavy ice and the ice flowed, that this could not be done.

THE COURT: This, of course, is speaking of in channel or in water structures, not land-based structures.

MR. LOSQUADRO: I think both, your Honor.

THE WITNESS: Both.

THE COURT: Why would the ice create any problem with a land based structure?

THE WITNESS: I am sorry, I didn't hear that part of your question.

It would not be a problem with land-based structures except for blocking the lens.

THE COURT: Is that much of a problem?

THE WITNESS: It is a minor problem, particularly during ice storms, freezing rain. It is a minor problem.

THE COURT: I would take it the major problems with land-based structures are (a), the cost of acquiring the right-of way to install it; (b), the ease with which vandals can tamper with the structure; (c), the sometimes difficulty in reaching an accessible spot to service the land-based structure.

THE WITNESS: And currently the environmental considerations.

THE COURT: People don't like having lighthouses flashing in their backyards; things of that nature.

The witness nods his head.

Q Captain, at your deposition before trial, do you remember testifying about the Booze, Allen report?

A Yes.

Q Do you remember handing this to me during the deposition and identifying it?

A Yes.

Q Is that a copy of part of the report?

A Yes.

MR. SCHULMEISTERS: May I see what you are handing him?

MR. LOSQUADRO: I am handing him everything you handed me.

Q There is handwriting in the margin there. Is that your handwriting?

A No.

Q Do you know whose it is?

A No.

Q Is that the conclusion of the Booze, Allen study?

A Yes.

Q Is the typed material the conclusion of the Booze, Allen study?

A Yes. It looks like a summary, because the actual report is much more voluminous.

Q Is that a correct copy of that part of the report?

A Yes.

MR. LOSQUADRO: I would like to offer this in evidence. It was produced by the government.

THE COURT: Any objection?

MR. BESHLIAN: None, your Honor.

MR. SCHULMEISTERS: None.

(Plaintiff's Exhibit 34 received in evidence.)

Q Is the Hudson River specifically mentioned in that report?

A In the exhibit?

Q In the exhibit.

A I don't believe the Hudson River is specifically mentioned.

Q Are there beacons presently in use in the Hudson River?

A Yes.

Q Are some shore-based and some water-based?

A Yes.

Q How many?

A Approximately 20 water-based and a total of 50 including the shore-based beacons.

Q About 20 water-based, but a total of 50 altogether.

How long have they been in use in the Hudson River?

A Some since the 1890's. I think the 30's, during the WPA, a lot of them were constructed.

Q The beacon simply is a telephone tower with a light on the top?

MR. SCHULMEISTERS: Objection. The Hudson has a lot of lighthouses. Why don't you be specific.

Q What type of beacons are on the Hudson River and I am talking about the upper portion, not the base.

A There are paper frame skeleton towers. There are sheet metal battery houses with skeleton towers and there are lighthouses.

THE COURT: We are going to take a brief recess at this time.

(Recess)

BY MR. LOSQUADRO:

Q Captain, has the Coast Guard ever given consideration to requesting the Army Engineers to deposit rock or aggregate near the rock south of Con Hook Island?

A Again, I have to say not specifically.

Q You don't remember?

A In a letter to the Corp of Engineers which I wrote, I asked them to consider including in their project the deposit of riprap which would otherwise be waste, spoils, deposit that at sites, and I had in mind sites like Diamond Reef, for instance.

Q Did you have in mind the rock south of Con Hook Island?

A I noted in the Corp of Engineers environmental impact statement for dredging on the river, that they had for years deposited rock at Con Hook. I am not sure if the rock was deposited near Con Hook Island or near the rock south of Con Hook Island.

Q I am speaking in that vicinity.

THE COURT: It is a shame we haven't a name for that rock. Somebody suggested yesterday it is known as Coast Guard Rock.

THE WITNESS: It is known as Sauk Rock, your Honor.

Q If I understand your answer, you don't know specifically if the engineers had been requested to deposit dredging material, which I think is what we are talking about, at or near the rock, requested by the Coast Guard? Is that what you are saying?

A What I am saying is, they were not asked specifically to deposit it at that location.

Q Were you considering or was the Coast Guard considering, if you know, moving Con Hook Island light closer to the Con Hook rock, the rock south of Con Hook Island in order to better mark it, if you know?

A To try to give you a responsive answer, in response to a question which you asked me, I said that the Corp of Engineers had been depositing rock in the vicinity of Con Hook.

MR. LOSQUADRO: Your Honor, I would like an answer to the question.

THE COURT: The trouble with your questions are, you load too much into them which makes the captain wary of answering it directly.

Q Was consideration given to moving Con Hook Island rock closer to the rock?

THE COURT: Why don't you ask him whether any consideration was given to moving the Con Hook light.

Q Answer that question.

A I have given consideration, personal thinking about the possibilities of moving Con Hook Light to the more southerly location provided the Corp of Engineers deposited riprap there.

Q Was the purpose to better mark the rock obstruction we are talking about today.

A The purpose was to provide a better mark for Con Hook for that vicinity of Con Hook.

Q Not to mark the obstruction?

A It would no longer be an obstruction. It would be a visible landmark if the riprap were laid on top of it.

Q What is the purpose of doing that, to move an aid to that riprap? Is that the consideration being given?

A This was a personal thought which I shared with you on the questioning.

Q Let me read from the deposition.

Do you remember testifying at a deposition prior to today in this case?

A Yes.

Q Do you remember being under oath?

A Yes.

Q Do you remember being asked these questions and making these answers at page 26?

"Q Since July, 1974, when you began as Chief of Aids to Navigation, are you aware of any requests received from anyone or any source to consider a different aid at what we call the Con Hook Rock?

"A Not at that time.

"Q Do you remember any request being received prior to that time?

"A Yes, not for a change in the aid, but rather for an alteration in the river.

"Q Would you explain what you mean?

"A In 1963 after the grounding of the Coast Guard cutter SAUK, consideration was given to removing the "obstruction south of Con Hook.

"Q The rock itself?

"A Yes, leveling it to 35 feet.

"Q Could you go on from there, please, on those discussions or considerations?

"A Basically, that was the consideration that was developed within the office of Aids to Navigation. I don't know how far that recommendation went. I have no way of knowing whether the recommendation was passed on to the Corp of Engineers, but it is a matter of record on the file regarding the grounding of the SAUK at that point.

"Q What was the SAUK doing at that time on the river?

"A It was icebreaking."

Do you remember being asked those questions and making those answers regarding the leveling of the rock?

A Yes.

THE COURT: I don't see anything different between what he testified to today.

MR. LOSQUADRO: Your Honor, he said he had no recollection, as I recall, of the specific alteration. He spoke very vaguely about what the recommendation was.

THE WITNESS: Alteration of the river as indicated in this document.

MR. LOSQUADRO: I think he hedged on that point.

THE COURT: Your problem is you keep putting compound questions with lots of aspects and one of the aspects you were throwing into your question was whether the Coast Guard asked the Corp of Engineers to do it. His problem with this is he knows they considered asking the Corp of Engineers to do it but he can't tell whether they did because all he has is a draft of the letter.

MR. SCHULMEISTERS: I submit nothing is inconsistent.

Q Page 45, middle of the page.

Do you recall being asked these questions and making these answers?

"Q While you were Chief of Aids to Navigation or since then, had any consideration been given to the adequacy of the aid at the rock in view of the casualties we mentioned today?

"A Some consideration has been given to the --

"Q During the winter months, I want?

"A Some consideration has been given to the adequacy of the aid, the aid station.

"Q When was that consideration given? Were you involved in it?

"A I will have to qualify my answer."

MR. SCHULMEISTERS: Objection. Read the whole thing.

Q "Q My question before that was, since you became Chief of Aids to Navigation and up to the present time -- you may answer the question from when you started as Chief of Aids to Navigation up to the present time?

"A I will have to qualify my answer. Attention was not given to that specific aid but rather to aids in general on the Hudson River as a result of a review of the draft environmental impact statement by the Corp of Engineers project for the Hudson River.

"Environmental impact statement" --

MR. SCHULMEISTERS: Read it the way it is transcribed.

MR. LOSQUADRO: A question was interposed.

"Environmental impact statement prepared by the Corp of Engineers for the Hudson River."

Skipping to the next page:

"Q The portion of the river since casualties involving tank barges, was that the environmental impact study?

"A No, it was directed to the effects and benefits of dredging on the Hudson River in an operation called SNAG removing debris. In that statement, they discussed the necessity for maintenance dredging and referred to previous projects of the Corp of Engineers for 'the same work and these projects involved removal of debris which had accumulated and caused the river to basically shore up, so it wasn't at its chartered depth. Removal of the debris and sediment and removal of, the deepening of certain channels and removal of rock from those channels.

"In response to this environmental impact statement, we expressed an opinion to the Corp of Engineers that possibly this rock which they intended to remove was suitable in nature for the construction of foundations for gravity structures for various aid stations presently marked by buoys which might better be marked by a structure.

"Q A beacon, for instance?

"A Beacon. The greatest part of this construction cost being the cost for the rock and laying the foundation.

"So a letter was directed to the Corp of Engineers, asking they consider this proposal by the means of proposing of the dredging."

THE WITNESS: Is it means of disposing of the dredging?

THE COURT: So far I don't see anything inconsistent with his present testimony unless you interpret the word "the rock" used earlier to mean SAUK rock whereas it is fairly clear to me that the rock to be removed generally as part of the dredging operation.

MR. LOSQUADRO: I think in the context of that questioning, it was that rock but let me continue.

MR. SCHULMEISTERS: For the record, the captain is shaking his head in the negative.

MR. LOSQUADRO: May I continue reading.

Q "We are primarily interested in getting the Corp to deposit rocks in locations, providing these locations are suitable for gravity structures.

"Q Was this particular location south of Con Hook Rock, an area being considered for that?

"A This area had been previously considered and used by the Corp for deposit of dredge materials. It was so indicated in the report and so, logically, it would be -- the Corp would consider using that as an area for deposit of rock.

"Q For what purpose?

"A For closing the gap between the western shore and the island and bringing up the shore up to the seven foot rock and basically making the obstruction visible so that a light could be -- so that the Con Hook Light could be possibly moved to the rock but in a better location move the existing Con Hook Light to a more prominent location."

THE COURT: I don't see that as being different from his present testimony.

MR. LOSQUADRO: Your Honor, my understanding of the answers I got earlier, he was a bit vague on the recommendations from the Coast Guard to the Army Engineers regarding the elimination of part of the rock.

Then I understood his answers to be very vague as to whether or not they considered moving Con Hook Light to better mark this rock.

THE COURT: The only thing that is the least bit confused between the two situations is whether if they did fill work in the area he would contemplate taking the Con Hook Light and moving it the full third of a mile or whatever it is down to the Sauk Rock or whether he is merely thinking of taking Con Hook Light and moving it somewhat further to the south but not all the way to Sauk Rock.

MR. LOSQUADRO: It could be either one. The idea being of to better mark the rock. That was his answer and he was very inconsistent.

MR. SCHULMEISTERS: Objection. This is argumentative right now.

THE COURT: Let's get away from it and put the question directly.

If the Corp of Engineers were to agree to your proposal and were to deposit riprap between Con Yook and Sauk Rock so that it became feasible to relocate Con Hook Light, where would you propose relocating the light and show it to me on the chart where you would consider the best place to move it to if they did all the fill work you needed.

THE WITNESS: I might consider leaving it here since the Corp of Engineers project would probably extend the shore.

If the Corp of Engineers did something like this, filled this area with riprap, I would consider putting the structure on here.

THE COURT: For purposes of the record, the captain just took a pencil and indicated two possible ways that the Corp of Engineers might fill the area. In one possibility they would fill from Con Hook all the way south to the rock, then shoreward and if they did that in effect making an entire promontory out of Con Hook, one single promontory out of Con Hook and the light, he would consider leaving the light where it is since the problem would be somewhat involved by making visible the entire area.

On the other hand, if all they did was to fill directly westerly of the rock where buoy 25 is, then he might consider relocating the Con Hook light southward where buoy 25 presently is.

Have I correctly stated what you presently told me?

THE WITNESS: No, I would consider putting a second light, because you would then need something to mark the promontory.

THE COURT: I correct my final remark to be if they did the second alternative he would install a second light where buoy 25 presently is.

THE WITNESS: May I go on to say that my concern isn't shown on this chart. On the next section of this chart.

MR. LOSQUADRO: Can we do this during cross examination? I don't have much to go.

THE WITNESS: There are many buoys that mark shallow spots in the river. One of them is Diamond Reef which I consider a much more serious obstruction to navigation, primarily to deep draft navigation.

THE COURT: We will get to the question of priority and what is most important and least important on cross examination.

Continue.

Q Where is Diamond Reef, Captain?

A Diamond Reef is above Newburg on the Hudson River.

Q On the question of beacons, Captain, there are several types of bases for beacons. Do you have what you call a gravity structure?

A Yes.

Q Does a gravity structure require some surface area above water in order to construct it?

A Yes.

Q Would riprap be used for that?

A Yes.

Q What would the gravity structure consist of?

A The gravity structure itself would be the riprap. The gravity structure is a general class of structure. It could be concrete, it could be riprap, it could be rock interlocked and grouted.

Q Could this be built up in shallow water and a beacon installed on top of it? As long as the base was above the waterline?

A Yes. Basically it would be building a rock island.

Q Are these commonly in use in the Hudson River?

A Yes. I mentioned before there are up to a dozen.

Q Do they all employ gravity structures?

A Yes. There is one exception. I think there is a forward range light in the lower Hudson from my study of the chart does not employ a gravity structure but I think it is otherwise protected.

Q I would like to inquire as to other bases. Are steel bases available, yes or no?

A Yes.

Q Is one type of steel base a four-legged eye beam, similar to Ambrose Tower, with a platform on it?

A Yes.

Q With a beacon on top of that?

A Yes.

Q What kind of bottom characteristic does this require?

A It could be used on a variety. If you could afford it, you could drill into bedrock and construct it on that.

Q I am talking about the four-legged or multilegged device.

A Yes.

Q Is there also something called a piling?

A Yes. That is the same as the base that we were talking about for Ambrose. Ambrose consists of four massive piles.

Q I am thinking of something different. I am talking about a hollow steel sleeve.

A That is what the base for Ambrose is. It is four steel piles.

Q Can you describe what the steel sleeves are like?

A A typical steel pile structure would consist of a 36 diameter steel, heavy gauge steel pipe.

Q Would it be hollow?

A Yes.

Q Is it filled with cement or rock?

A First it is injected into the bottom by one means or another. Either by hosing the bottom out, by shoveling it out or drilling.

Q Pile driving?

A Then generally the structure after being fixed in place would be filled with concrete, concrete displacing the water, then the items on top of it.

Q Does that require hard rock?

A No.

Q Does it require good bedrock?

A It requires a good foundation but you can drive it into a sand bottom or mud. It would be nice if you can end up on top of rock.

Q Could that support a beacon?

A Yes.

THE COURT: Would either the steel base or the steel sleeves be sufficiently strong to resist ice flows in the Hudson such as those experieneed at buoy 25?

MR. LOSQUADRO: I think that question has to be broken down into the depth of water, that type of thing.

THE COURT: Assume seven foot depth of water, mean low water.

THE WITNESS: No, your Honor. My experience -- I have knowledge of two such structures constructed in the First Coast Guard District, one at Plum Gut and one at Weymouth Bay wiped out by heavy ice.

Q What depth of water are those structures?

A The one in Plum Gut was, I believe, in 20 to 30 feet of water.

Q What depth of water is Ambrose Tower?

A Ambrose Tower is in 70 feet.

Q What depth of water is the other one you mentioned?

A It was somewhat shallower. I think it was about 15 to 20 feet.

Q Are those devices exposed to the full strength of the current in their locations?

A Yes.

Q West of the rock south of Con Hook Island, could it be removed from the full strength of the current?

THE COURT: I think but I am not sure that he is referring over here on the shore side.

Q The shallow water south of the rock. Anywhere between the shoreline and the rock.

A I don't know what the depth of water there is.

Q One foot here, two foot here. The blue area.

THE COURT: And you also have a deeper area that appears to be 44 feet running between them.

MR. LOSQUADRO: I don't know if there is an indication of the depth.

THE COURT: South of it it shows a 44 foot depth.

Q Anyplace back there, anyplace west of the rock, would it be out of the full strength of the current, in your opinion looking at the chart?

A It would appear that that would be sheltered from the full force of the ice.

Q Have you ever considered using that structure at that location?

A No.

Q That would not require riprap, would it?

A It would still require --

Q It would not require a surface above the water?

A No.

MR. SCHULMEISTERS: Let the witness answer the question.

Q Would you answer the question?

A That type of three-inch diameter pipe structure could possibly be installed there. You would have to have a survey to see if it was appropriate for installing it there.

Q You never considered installing it there?

A No.

Q You never conducted a study on it?

A No. My experience was that that type of structure would be inappropriate for exposure to ice.

Q But you did consider putting your beacon there and asking the Army Engineers to give you riprap?

A That was in response to a hypothetical question you put to me on deposition; if the Corp put the rock there, what could I do.

Q Are there present considerations being given by anyone for removal of that rock or partial elimination of it?

A As I answered before, Mr. Burley, who is the Commissioner of Environmental Protection of the State of New York, has addressed such a letter to the Corp of Engineers. I assume that is what he told the Coast Guard in a letter to the Coast Guard.

Q Where is this gentleman located?

A In Albany I believe his address is.

Q Do you know if this recommendation arose out of the history of groundings at this rock?

A That is what the letter said, and we asked him what history he had of those groundings.

Q You are aware of the Turecamo incident in 1973?

A Yes. If I may, I will tell you exactly what history I am alluding to.

Q I would like to ask the questions.

A The Turecamo? I am aware of the name and that it ran afoul of the rock.

Q Did you study any reports concerning that incident?

A No.

Q Did you look at a Coast Guard accident report submitted by any of the vessels involved in that incident?

A I may have looked at an accident report but I wouldn't characterize it as studying it. Sighting it would be more appropriate.

Q Did you look at it at your deposition?

A Sighting it at my deposition.

Q Do you recall in the accident report it stated that the buoy was under the ice?

A I am sure if I sighted it there and read it there, yes. Your statement is probably correct.

Q Are you aware of any casualties at that rock subsequent to the New London incident but none that occurred this winter?

MR. SCHULMEISTERS: I have a standing objection.

THE COURT: I will allow it for purposes of showing a dangerous condition, not for showing purposes of Coast Guard notice.

Q Captain, did you say earlier you remembered a recommendation concerning the establishing of a red sector light somewhere on the westerly side of the river?

MR. SCHULMEISTERS: Objection.

MR. LOSQUADRO: I don't recall. I am asking him if that was his testimony.

THE COURT: Did you make any reference to such a subject?

THE WITNESS: No.

A I made reference to a discussion with Captain Hallock, possibly.

THE COURT: I don't recall.

MR. LOSQUADRO: I don't recall either.

THE COURT: What discussion did you have with Captain Hallock?

THE WITNESS: After Captain Hallock gave a deposition on this subject he mentioned to me that he had been asked or led into consideration of the possibility of a red sector light.

THE COURT: We are not interested in those things promoted by the attorneys for the plaintiff in this litigation. We are interested as to whether in the course of your regular business the Coast Guard has considered such, and I think you said no.

THE WITNESS: I have not.

Q The can buoy used today, which has been described as a second-class can, is that the same type of aid that has been used every winter for the last ten years?

A No. We have changed design of the buoys to include radar reflectors in the upper section of the buoy.

Q When was that done for the 25 can buoy?

A I can't tell you the exact date, but it is a matter of record.

Q Do you have an estimate when that was done?

A No, because the transition has been taking place over several years and if we run short of radar reflective buoys, we will put back the conventional ones.

You will have to consult the record.

Q Aside from that alteration or possible alteration, has that buoy been the same buoy that has been in use since 1963?

A The same buoy?

Q The same can buoy, same type of buoy, second-class can?

A I don't know.

Q Could you look through the file which is in evidence and find out when that was done?

A There is an indication here that a 7 by 17 lighted buoy was installed, then a first-class can buoy was installed and then a second-class can which is a smaller buoy.

Q When did that change occur?

A In early December of 1976 there was a second-class can --

MR. SCHULMEISTERS: Your Honor, I have an objection on this.

A In late December of '73, there was a second-class can and I note that in late December of 1974, there was a first-class can.

Q What is the difference between them?

A First class is larger.

Q How much larger?

THE COURT: Was that a permanent change or just a temporary alteration?

THE WITNESS: I can't tell at this point.

THE COURT: What he really was asking you, though, you believed there was now a radar reflector on the winter buoy. Can you tell us when the radar buoy included in the winter installation?

MR. SCHULMEISTERS: There is an objection.

THE COURT: It will not be considered as an admission against anything. If the buoy was under the ice, the radar reflector wouldn't have helped the situation.

THE WITNESS: I said I believed there was a radar reflector. In looking at the file it indicates a buoy 1C.S. and 2 C.S. In going back further, I see a 1 C.S. was used in 1970.

Apparently the buoy size has changed from smaller to larger to smaller.

THE COURT: Is there any particular reason --

THE WITNESS: It is not a radar reflector, it is a special if I read that code correctly.

THE COURT: It is a special radar --

THE WITNESS: It is a first-class can special. It would be a structure without a radar reflector in solid can shape.

THE COURT: Which is the more resistent to ice flows, a first-class can or second-class can, or does it make any difference?

THE WITNESS: The first-class can will offer more resistence to ice flows. However, it would also have more buoyancy. The smaller the buoy, generally the easier it is to be dragged under by the ice and this, incidentally, is the reason for the use of the spar buoys on the St. Lawrence because they are very easily run over by the ice. It is a compromise between keeping the buoy on station and having it visible and there the compromise is in favor of keeping the buoy on station.

THE COURT: What you are telling me is if I understand you, the larger first-class buoy has buoyancy and, therefore, not as likely to be covered by the ice, but it also has more surface and, therefore, more likely to be dragged off station by the ice?

THE WITNESS: Yes.

THE COURT: Whichever way you turn, you have a problem?

THE WITNESS: Yes.

Q There are searchlight reflectors on these buoys?

A There are currently retroreflective coatings put on the buoys.

Q In February of 1974, was that buoy supposed to have a searchlight reflector?

MR. SCHULMEISTERS: Objection.

A I couldn't tell from this record without referring to the decoding.

Q What is called for for the area? Do you know whether or not a searchlight reflector is called for for that spot?

A Currently it is standard on all of our unlighted buoys but I don't know what was in effect at this time.

THE COURT: Be that as it may, let's move on.

MR. LOSQUADRO: Nothing further.

MR. BESHLIAN: No cross.

MR. LOSQUADRO: Is Mr. Schulmeisters going to cross or use the witness for his case?

THE COURT: Why don't we separate it into two. First use that for cross examination on subjects brought out by plaintiff, then indicate that you are starting on your own independent topics. If you wanted to be fussy about it, you can take the witness off.

MR. LOSQUADRO: Frankly if he is going to use him, he should use him right now.

CROSS EXAMINATION

BY MR. SCHULMEISTERS:

Q Captain, you mentioned Diamond Reef as a possible place.

I show you Plaintiff's Exhibit 14 and a chart 123457, formerly C.N.G.S. No. 283.

MR. LOSQUADRO: Are you going to point out specific buoys?

Q You mentioned Diamond Reef in connection as a possible other location you would be more interested. Would you show for us Diamond Reef?

A It is right here.

Q Would you please describe the type of situation you have over there?

MR. LOSQUADRO: Object on the ground of vagueness. Can we identify the buoy by number?

THE COURT: Give the buoy number, Captain.

THE WITNESS: It has no number. It is Diamond Reef buoy quick flash. It would have a light list number which I will have to refer to the light list.

THE COURT· Let's not overdo this. I am not concerned with the number of that light. Let's get to the point of this.

Q Captain, what type of a situation do you have in the Hudson -- is Diamond Reef buoy in the Hudson River?

A Yes.

Q What type of situation do you have at Diamond Reef?

A At Diamond Reef it is a promontory in the middle of the Hudson River. If the buoy is swept off or dislocated, that obstruction becomes a sheer hazard to navigation. The buoy then becomes no longer an aid to navigation but a device which will definitely mislead navigation.

Q Are there any other similar situations?

A Yes. There is one, another mid channel obstruction with an obstruction buoy at Van Keurens. That is about a mile -- three and a half miles above Diamond Reef.

Q Any more?

A Another at Blue Point, two miles further on.

There is a similar situation at Dinsmore Point. It is not as severe and that site is removed from the center of the river.

On the southern approach to Greenflat near Saugerties, there would be a possible location for a gravity structure.

These are the sites I had in mind in my letter to the Corp of Engineers.

Q If you had to put a gravity structure in such a place without an Army Engineers providing you the riprap or the rock, do you have any idea of the approximate cost of one of these sites?

A Yes.

MR. LOSQUADRO: Objection. The cost would vary with the different situations.

THE COURT: Let's confine yourself to buoy 25.

MR. LOSQUADRO: And if a study has been made.

THE COURT: If he knows.

Can you give us an approximate cost of building an underwater structure at buoy 25?

MR. LOSQUADRO: Your Honor, I think that might depend upon where you put it.

THE COURT: Let's take it both ways. First, if you built it right out where the buoy presently marks the seven foot depth of rock and secondly, if you built it closer into shore in national water.

THE WITNESS: I can give you a specific number for a riprap structure in twelve feet of water.

MR. LOSQUADRO: I don't know if 12 foot of water is a relevant area.

THE COURT: We are talking it right over the rock which is seven feet.

Would the cost differ materially between seven feet and 12 feet?

THE WITNESS: Yes.

THE COURT: Then you really can't give me an estimate for seven feet structure. It wouldn't be on riprap, it would be on solid base rock.

THE WITNESS: You are talking about a structure on the rock itself?

THE COURT: Yes.

THE WITNESS: I couldn't give you an estimate.

MR. LOSQUADRO: Captain, could you build a gravity structure on the rock if it is a pinnacle head?

THE WITNESS: I doubt very much you could build it. The gravity structure is most adaptable to a flat bottom and you would probably have to knock off the peak of the pinnacle.

THE COURT: I don't know what we are dealing with. Moreover as I understand it, a gravity structure is not suitable for water of any depth and seven feet is too much depth for gravity structure.

THE WITNESS: No.

THE COURT: You could do one?

THE WITNESS: Twelve feet. I have a figure for a structure in 12 feet and 18 feet of water.

THE COURT: I thought you told me earlier if you built a gravity structure at that depth, the ice would probably sweep it away.

THE WITNESS: Not a gravity structure. That was a single-pile 36-inch diameter, but a gravity structure has been quite successful on the Great Lakes. As a matter of fact, in the Hudson River, the riprap structures are precisely gravity structures.

MR. LOSQUADRO: I was referring to west of the area --

THE COURT: Let Mr. Schulmeisters finish.

Q What would be the cost of a gravity structure -- give it to us for 12 feet.

A For 12 feet, cost of the rock would be $65,000 for the cost of the rock alone. Transportation, erection and construction of the beacon, the beacon material would be another 25,000 for the cost of materials and the cost of construction, that is, transportation, laying the rock in place would bring the total cost up to at least $150,000.

THE COURT: When it is done, would this beacon be above water or partially below water?

THE WITNESS: The riprap structure would be approximately four feet above water with a battery box and light structure on top of that so it would be relatively protected from the light structure itself. The top of the riprap would be protected from the ice.

Q If you would have a choice of building one or two such structures, would you choose Con Hook Island or some other area in the Hudson River?

THE COURT: Do you mean Con Hook or the rock?

Q The rock south of Con Hook --

MR. LOSQUADRO: I object. Doesn't it depend upon the hazard to be marked?

MR. SCHULMEISTERS: That is what is being asked, are there more serious hazards in the Hudson that come first?

THE COURT: I will allow it.

A I indicated my priorities would be Diamond Reef first, the other similar obstruction is second and if there was more rock left over, particularly if the Corp of Engineers would give it to us, doing something at Con Hook.

Q Incidentally, before any building can be done, what has to be done first?

A A survey.

Q In addition to that.

A First of all, you have to set up a project and do an analysis to see if the aid is needed. If it is needed for the reasonable demands of commerce or if it is a redundant proposal.

Q We will come back for commerce later but let me ask you this. How about with respect to environment, is there anything else that has to be done?

A Obviously the Corp of Engineers was submitting an environmental impact analysis to permit them to do dredging and we would have to go through a similar process.

THE COURT: Let me ask you something.

As it presently stands that seven foot depth constitutes a hazard to commercial navigation, but I would expect the waters are sufficiently deep that most pleasure boats can pass over it with no risk, is that correct?

THE WITNESS: Yes.

THE COURT: If you put this riprap in, you create a new hazard to small craft that doesn't presently exist.

THE WITNESS: A visible hazard.

THE COURT: Visible but a hazard?

THE WITNESS: Yes.

THE COURT: So you have a choice between the interest of small craft and the interest of larger craft in terms of when such a structure is created?

THE WITNESS: You also have to consider what type of fish hibernate there or breed there and what the bottom conditions are. A whole spectrum of ecological matters.

MR. LOSQUADRO: Your Honor, I was thinking in terms of the shoal area west of the rock. I don't think any boats, pleasure boats or otherwise would go there.

MR. SCHULMEISTERS: Are you testifying what they do --

THE COURT: Mr. Schulmeisters, just keep out of this. If he wants to on redirect go into the cost of constructing one on the shoreline, he may do so.

Q Mr. Losquadro asked you whether or not there had been a request and there was talk about a letter from some gentleman in Albany and did the Coast Guard then make a reply to this request from Albany?

A Yes, we did.

MR. LOSQUADRO: The Coast Guard made a reply.

documents.

MR. SCHULMEISTERS: They have alluded to many things.

MR. LOSQUADRO: We haven't alluded to any accident we haven't put in evidence.

MR. LOSQUADRO: No objection on the grounds the letter that was received be put into evidence, also.

THE COURT: All right.

xxx (Government's Exhibit EE 1 received in evidence.)

Q Can you briefly without reading this document, Captain, tell us what is the reply?

MR. LOSQUADRO: Why don't you read the letter, it speaks for itself.

THE COURT: I will read it right now myself.

I thought the Turecamo ran aground in '73.

MR. SCHULMEISTERS: I think the form says '72.

MR. LOSQUADRO: The 2692 and handwritten statements, they are all dated the same date except one said '72 and it was an error by the man writing it.

THE COURT: The error has been picked up in this document, then.

Off the record.

(Discussion held off the record)

Q Captain, from what document did you receive the information as to the amount of traffic in the Hudson River which was mentioned in EE 1?

A That information was average information taken from the Corp of Engineers report.

Q What year do you mention there?

A I mention an average covering ten years from I believe '75 to '65.

MR. SCHULMEISTERS: As long as we are on the subject, your Honor, I have here the Waterborne, Congress of the United States for the calendar year 1971, '72, '73 and '74.

THE COURT: We are not going to burden the record with that.

MR. LOSQUADRO: Your Honor, this is all hearsay but we agree this is a very busy river.

MR. SCHULMEISTERS: I have certain pages Xeroxed. I would like to put them in evidence.

THE COURT: If you just put the pages in.

MR. LOSQUADRO: I will object to the introduction of this material. We don't know what it is. It is not identified.

THE COURT: They are official government publications.

MR. LOSQUADRO: I am going to object to their admissibility. I don't know how accurate it is, whether it breaks down the amount of traffic per month in a given month, how letter cites how much traffic passes that spot each year, to indicate the relative rarity of strandings considering the heavy volume of traffic and these figures support, I assume, the conclusion about traffic volume and we are getting very far afield.

Let's move on.

Q Captain, have you also upon my request made any inquiry as to monthly traffic during the winter months during any particular year going past this year with respect to similar situations?

A Yes, monthly traffic statistics.

Q Can you tell us, please, what it is and where you got it?

A What I have primarily is monthly traffic statistics for tug-barge type vessels on the Hudson River and I can either give you a monthly, specific monthly figure for a given year or some averages, but basically in the year '74 and '75, there are roughly 7200 tug barges per year. This would break down to an average of 600 per month or 20 per day. However, seasonal variation during December, January, February, traffic is much less. It is approximately 12 per day whereas during the summer months it rises to around 28 per day.

So in February, '74 -- it was 384 tug-barge.

Q During that month?

A Yes.

THE COURT: Traffic is less than one-half as great during the winter months?

THE WITNESS: Yes. The peak traffic was in August, 800.

THE COURT: What is the yearly average figure per month?

THE WITNESS: Based on the total number of per year, about 7200. In one year, it was 7,059 and in '75 it was -- take the 7200 as a median and that would be 600 per month or 20 per day.

THE COURT: In the winter months?

THE WITNESS: It is down to 12 per day or an actual count, 384 in the month of February.

THE COURT: It is a little more than half the yearly average during the winter months?

THE WITNESS: Yes.

Q This breakdown you got from where?

A I received this breakdown from Lieutenant Sutherland, Vessel Traffic Systems Center. That is Vessel Traffic Systems for the Port of New York and he got the information from his computer bank and he put the information into the computer bank on the basis of a site study which he performed in connection with an analysis of traffic patterns in the New

York area.

MR. SCHULMEISTERS: The reason I mentioned that is because these figures are much more substantial. The Army Engineers have even greater traffic.

MR. LOSQUADRO: We agree it is a very busy river, your Honor.

Q There was a reference to the Booze, Allen study. I refer you to Exhibit 34 and I believe you testified this is the conclusion part of the Booze, Allen study.

Captain, can you tell us, please, first of all, what was the purpose of the Booze, Allen study?

A The Coast Guard had made technical changes in its aids to navigation over the previous ten years including switching from acetylene to electric; increasing the capacity of the batteries, improving the lenses going from electromechanical flashes to transistorized flashes and going from four place lamp changes to six place, and we had not realized any economic advantage for doing that because we had not changed our maintenance system. An analysis of thecost of aids to navigation indicated that the cost of the maintenance system, the shore bases and ships and people that take care of the aids was by far the greater proportion of the total system cost. So, the Booze, Allen study directed itself at reducing the cost of the system by reducing the cost of the maintenance part of it. Specifically they proposed eliminating buoys which required buoy tenders and replacing those buoys with structures of comparable cost and, hopefully, greater longevity and more stability.

In areas where that replacement could not provide more stability or comparable costs or, as a matter of fact, where it even appeared that the conversion to structure was a mistake because of environmental factors, the Booze, Allen study would not apply. We could not convert those buoys to structures.

Q Did the Booze, Allen study come up with various conclusions?

A Yes.

Q Are those conclusions contained in Exhibit 34?

MR. LOSQUADRO: The whole document is in evidence. We intended for you to see this material. All this man can do is read from it. He was not involved in the study.

THE COURT: What is the question.

(Record read)

THE COURT: The answer is obviously yes. Continue on.

Q Under what category would the Hudson River come?

A The Hudson River would come --

MR. LOSQUADRO: Objection. Was the Hudson River the subject of that report?

THE WITNESS: No.

MR. LOSQUADRO: I don't think he can answer the question, your Honor.

THE COURT: I take it the Booze, Allen study was nationwide or the entire area for which the Coast Guard has jurisdiction?

THE WITNESS: Yes. It was followed up by separate studies within each district by each buoy tender and buoy tender facility.

THE COURT: Can you tell by the way the report is accumulated under which section they would be referring to a water such as the Hudson River?

THE WITNESS: Yes, it would be considered fresh water subject to heavy ice conditions.

Q Did that study make a conclusion as to usability -- let me withdraw that, please.

You mentioned economics with respect to changing from buoys to fixed structures.

A Yes.

Q Basically, with what kind of a structure -- let me withdraw that.

What kind of structure was considered there as to economic cost?

A We are talking about single pile structures or four pile structures, and I am talking now about wooden piles maybeup to 18 inches in diamter and 50 feet long.

Q Would such a structure withstand the ice?

A No.

MR. LOSQUADRO: Objection. I think we are getting off the beaten path.

THE COURT: Absolutely, but I will allow it.

MR. LOSQUADRO: I questioned the man on a more substantial basis and the captain answered specifically that he didn't consider it for this location.

THE COURT: I know.

Let's move on with this.

Q Have you yourself had any experience with the large single pile structures?

A Yes. I mentioned before I had been following with interest the performance of large single pile structures in an area I used to work.

MR. LOSQUADRO: Your Honor, it hasn't been considered for the Hudson and I don't know that the question is appropriate.

THE COURT: How do we know until we find out where he is going with the questions?

MR. LOSQUADRO: We do have to know the areas -- all right.

Q I think you were cut off in the middle of your answer.

And such a structure from your experience, would it or would it not withstand ice?

A No.

Q Would it withstand ice in the [illegible] Con Hook?

A No.

MR. LOSQUADRO: Objection. He answered he never considered it for Con Hook.

THE COURT: This may be why.

Can't we move on without all of these objections?

Q Why would it not withstand the ice, sir?

A Because the ice forces would cause it to either topple or fracture.

MR. SCHULMEISTERS: Your Honor, it is almost one o'clock. I was going to go back over some of the captain's experiences but I think we will find out there is some more connection with aid to navigation.

THE COURT: You have reached the point where you have completed your cross examination and you are about to adopt him as your own witness?

MR. SCHULMEISTERS: Yes, I have.

MR. LOSQUADRO: May I have a few on redirect; then of water for a gravity structure?

A I have not got a specific determination for eight feet but I do have a specific determination for 12 feet.

THE COURT: Incidentally, were those costs inclusive of the Corp of Engineers cost in putting the riprap in there?

THE WITNESS: That assumed we had to buy the riprap on the market.

THE COURT: If the Corp of Engineers would come down and deposit sufficient riprap for you, you could do the whole thing a lot cheaper?

THE WITNESS: Yes.

THE COURT: Your problem is the Corp of Engineers maintains that rock is not in their jurisdiction?

THE WITNESS: The Corp of Engineers will have to get rid of that rock somehow anyway. We are trying to get under the umbrella at the same time, save the people some money.

THE COURT: They don't mind dumping there if they have some stuff to dump, but they would take the position removing the rock doesn't fall in their jurisdiction?

THE WITNESS: Yes. It does not fall within their jurisdiction. They said it is not within their jurisdiction because it is outside navigable channels.

Q Have they indicated it is within the Coast Guard body else can go get them but all you have to get here right now are some files which in effect the last couple of witnesses have told us they don't have.

MR. KIMBALL: What I will do is scratch out number three and leave one and two.

THE COURT: Exclude the Ethyl H in writing.

MR. KIMBALL: I did that and I will scratch out the third request which leaves it I am requesting the 2692's and any investigation reports, then the buoy file for this particular buoy and not the general letter file. I will make a separate document up for that one.

THE COURT: All right.

Can we continue with this witness.

MR. SCHULMEISTERS: I will try not to overlap, your Honor, but there might be some overlap for continuity sake.

DIRECT EXAMINATION

BY MR. SCHULMEISTERS:

Q Captain Glass, would you please give us a brief history of your career as a Coast Guard officer?

A From the beginning?

Q Yes.

A Graduated from the Coast Guard Academy in 1950. I served aboard an icebreaker, East Wind for a year and a half.

I served aboard Coast Guard cutter Spar.

Q What were your duties there on the Spar?

A I was first operations officer, then executive officer, then commanding officer.

Q Did that include navigation?

A Yes.

THE COURT: Where was that vessel located?

THE WITNESS: Narragansett Bay, Bristol, Rhode Island.

A We operated throughout Nantucket Sound, Rhode Island Sound.

Q Did you operate the Cape Cod Canal?

A Yes.

Q For how long a period of time?

A For two years and I attended M.I.T. in Cambridge in a course of engineering physics.

Q For how long a period of time?

A Fifteen months. Then I attended the University of Rochester -- M.I.T. engineering physics accoustics for a period of 15 months. Then University of Rochester, optics, for two years, then in 1966 I was assigned to Coast Guard Headquarters as a first project officer, then branch chief for the Testing and Development Division, Aids to Navigation Section.

Q Briefly, what were you doing?

A Design and development of aids to navigation and working closely with civil engineering in aids to navigation developing aids to navigation to meet new requirements. These are new technical developments. We developed the transister, new buoy bodies, things of that sort.

Q Would you continue?

A I went to a first executive officer then after five years. Then in research and development I went as executive officer, then commanding officer to the Coast Guard cutter Cactus. I served there for a period of two years. It was out of Boston.

Following that I returned to Coast Guard Headquarters and I served as assistant chief of the signal engineering branch for a period of two years and following that, as chief of the signal branch in the civil engineering division for a period of two years.

Q Approximately what years were those?

A It would be hard for me to recollect the years. It would be ten years ago.

It concluded in 1969 when I left. That would have been '64 to '69, I believe. In that job we actually did the aids to navigation engineering. We would accept applications for changes in navigation proposed by the districts, analyze them and determine if they are realistic and approve the projects and I was involved at that time in the International Lighthouse Conference and I was a U.S. delegate to the International Lighthouse Conference.

Following that I was an ocean engineering staff representative on the staff of the chief of engineering for the Coast Guard and I was project officer for National Data Buoy project. Following that I was commanding officer of the precommissioning detail of the Coast Guard cutter Sherman and executive officer of that ship. After that I returned to Coast Guard Headquarters as a division chief in the office of research and development in engineering technology and stayed there for a period of five years, at which time I came to the Third District as Chief of the Aids to Navigation Division -- excuse me, Branch.

Q From there --

A Now I am Chief of Operations.

Q During your time in Washington, did you have any connection with that Booze, Allen study?

A During the initial part of my assignment as division chief in research and development, during my last tour in Washington, the Booze, Allen study was being done by a special project group which worked in the office of research and development in an adjoining room. So because of my background in aids to navigation, I was acquainted with what they were doing and sat in on many of the deliberations and consultations.

Q From your experience as Chief, Aids to Navigation, which included the Hudson River and your prior experience which you have briefly described, do you agree with the conclusion of the Booze, Allen study with respect to the Hudson River?

A Yes.

THE COURT: By the Hudson River, you mean the section that generally applies to rivers subjected to ice?

THE WITNESS: Fresh water subject to ice. Yes, sir.

Q Do you have an opinion whether a pile structure could be placed there on the rock that has been the subject of this discussion?

MR. LOSQUADRO: What type of pile structure? Objection. There are day marks and more substantial items.

Q Let's take the pile structure considered in the Booze, Allen study.

A A simple wooden pile could not be used there.

Q I believe you already testified --

A You can erect a structure there but the expense would be formidable. It would involve significant site preparation and a survey beforehand. It would be a substantial engineering project.

MR. LOSQUADRO: Your Honor, I first understood the captain to say a wooden pile structure would not be suitable.

THE COURT: That is what he said. Then he said there are types of structures that could be placed in that area but the expense would be formidable and require substantial preparation and study.

MR. LOSQUADRO: Can we have a description of what those structures would be?

THE COURT: Why don't we take what you would view to be the cheapest, most efficient structure to operate without being swept away by ice?

THE WITNESS: I would have to say that the Booze, Allen study pretty well typifies that type of structure.

By referring to the types used on the Great Lakes which are basically gravity structures.

Q What about the gravity structure?

A It would have to be grounded on a relatively flat plot. It could be rock, sand or mud bottom. Basically it would consist of a rock island of large chunks of rock, either linked together or grouted together or just piled, depending upon what method of collection you used, whether you actually attached them one to the other or piled them. If you piled them, you would have to make the pile larger to withstand the force of the ice.

You could make it more elaborate by building a caisson first, putting the rock inside, filling it with concrete and leaving the sheet mate case on. You would have to set this on a flat bed. You would have to prepare it. Whatever the topography is now, you would have to make sure there was a flat section. Once the gravity structure was in and extended, say, four to eight feet above the water, you would simply build a light structure on it, a relatively expensive light structure.

THE COURT: Let me suggest to you the plaintiff's expert was not advocating the building of a beacon or permanent structure where buoy 25 is. His testimony and I take it they will not have any further witnesses in that regard, was to the effect of building a range or sector light on the bank and you should be directing your questions to that proposal.

I am aware Mr. Losquadro also advocated putting a permanent beacon on the west shore of the river, but I am not convinced that would -- while it would withstand the ice, it would be well off the hazard.

MR. LOSQUADRO: The plaintiff's expert did not advocate that or not advocate it. It is plaintiff's position that the technology is such that such a thing could be developed.

Conversely, the government can be held responsible for negligently or inadequately performing tasks it has undertaken to do. You make a distinction between a floating aid in the river to the erection of land-based aids on the opposite shore of the river and you say that that is such a dramatic change as to well fall within the government's discretionary powers in the area?

MR. SCHULMEISTERS: Definitely.

THE COURT: I understand your position. Whether I agree with it or not, is something I will have to pass on.

BY MR. SCHULMEISTERS:

Q Captain, would you tell us, please, first of all, how would a sector light work?

A Mechanically?

Q Yes, I guess first mechanically and what would be the result?

THE COURT: We had a lot of testimony on that. Did you hear the witness describing sector lights?

THE WITNESS: I heard him.

THE COURT: Was his description accurate?

THE WITNESS: No.

THE COURT: Give us yours.

A A sector light is a cylindrical frenel lens with a colored glass sector on the interior. The colored glass sector is cut to sustain an arc over which you desire to project a colored beam. The source of illumination is at the center of the cylindral lens, at the focal point, and the same lamp that illuminates the white arc of the lantern or the beacon also illuminates the colored arc of the beacon. The exception or the difference is that the transmission factor of the red or green filter, whichever color you decide to use, is only about 20 percent, so the beam candle power in a direction of the colored sector is only about one-fifth of the beam candle power in the white sector. This means that the range of visibility is substantially reduced by almost a factor of one-fifth.

Q How about the area of transaction from one color light to the other?

A Also, there is an area between the white and the red sector where there is indecision. You don't know if you are in the white sector or in the red sector.

As I mentioned, there is the lamp that is a source of illumination and there is a certain precision with which these lamps are manufactured and can be placed within the lantern. The lamps are generally placed within a lamp changer which contains four to six lamps and when one burns out, it flips another into position and depending upon the manufacturing tolerance of the lamp and the precision with which you place the lamp changer inside the lantern, the sector may actually move a substantial number of degrees horizontally so that -- and also if you have someone maintaining the light, fiddling with the light trying to fix it or thinking they are just replacing lamps and displacing the filter, there is a possibility the sector can be offset.

We have two problems right now existing in the Third Coast Guard District where this has happened. One by design, by poor design, and one by accidental installation. These are in Delaware Bay.

Q What is the result when you have this type of a displacement?

A The result is that you are giving a false dangerous sector, or you may project a safe white sector.

THE COURT: Considering the illumination problem, what is the maximum usable distance for a sector light?

THE WITNESS: It depends upon the candle power.

THE COURT: What is the strongest you have?

THE WITNESS: We have a 36-inch beacon at the breakwater at Delaware Bay which is advertised as a 20 mile beacon and the sector light is rated at five miles visibility.

Q Is that the type of an aid that would normally be on a river?

A No, it is a lighthouse. It was a major lighthouse.

It was an occupied lighthouse at one time, the light on Delaware Bay.

Q In the area, even if it is working the way it should be working, is there an area of passing from red to white where you have both colors showing?

THE COURT: He said that not more than two minutes ago; didn't you?

THE WITNESS: Yes, your Honor.

Q Considering what you have said about a sector light, do you think a sector light would be a desirable aid in, first of all in place of the Con Hook Light?

A I think as one would use it there supposedly to mark the rock, the western edge of the rock, that actually it would decrease the value of the light as it serves an approach from the south. It would not be seen. The red sector would reduce its visibility so the light would not be seen as far when approaching it from the south.

MR. LOSQUADRO: I am not sure I understood where that light would be under those circumstances.

A The light would be projecting from Con Hook Rock on direction of approximately 015 degrees true.

MR. LOSQUADRO: You are speaking of putting it on the rock?

THE WITNESS: Con Hook Island.

Q Do I understand you that you think a sector light on Con Hook Island would not be desirable?

A It would be undesirable for traffic coming upstream.

THE COURT: I don't know that anybody has really advocated that.

Q How about a sector light on the east side of the river?

MR. LOSQUADRO: The question was a sectorized range.

THE COURT: I think both a range and a sector light were both discussed.

THE WITNESS: The sectorized range, your Honor, would merely consist of the same type of lantern I have described before with a green filter on the other side.

THE COURT: Be it a sectorized range or a sectorized light, if one were put on the east shore of the Hudson, let us say, somewhere between Con Hook and buoy 25 so as to mark the straight line that apparently most tug captains steer --

THE WITNESS: You mean towards Sugarloaf Hill?

THE COURT: Yes, lining up something that would substitute for Sugarloaf Hill when Sugarloaf Hill couldn't be seen, how would that work?

THE WITNESS: Let me change the terminology from a sectorized range to a single station range light. It is the same thing. A single station range light could be erected if space were available. It could be erected and set up there.

THE COURT: Either down by the railroad tracks or further up back on Sugarloaf Hill?

THE WITNESS: Yes, your Honor, if the area were cleared, a single station range light could be installed.

Q Considering the system of navigation aids that exist on the Hudson River, is this the type of an aid that you normally would be putting in this area?

MR. LOSQUADRO: Objection. I think he is leading him.

THE COURT: Yes, you are.

Now that you have asked it, he can answer, but don't do it again.

A Considering the natural landmarks in the area, I would not consider an additional aid to navigation necessary in that area.

Q Would you explain to us, please, why?

A As you pass under the Bear Mountain Bridge, if you adhere to the east bank and just stay off the bank about 300 yards and proceed up to, say, 1200 yards beyond the bridge until you come onto a heading on Sugarloaf Hill with the beacon on top of the tower on Sugarloaf Hill, keeping 300 yards off the beach, you can steer on that Sugarloaf Hill beacon and you will find the beacon on the west side of the Bear Mountain Bridge right on line, so you can stay on line with that beacon and the beacon on Sugarloaf Hill.

MR. LOSQUADRO: Is that a beacon or finial?

THE WITNESS: Finial.

Q Let me hand you a blank pen. Draw a line from this finial and mark it with the letter I.

THE COURT: I don't know that that is necessary. What he is saying is readily apparent to everybody. The problem arises when weather conditions inhibit a view of Sugarloaf Hill and make a view of Con Hook somewhat more difficult and when there is substantial ice buildups along the sides of the river so it is difficult to gauge whether you are in mid-channel and when buoy 25 goes under the ice, then the problem develops.

THE WITNESS: Your Honor, respectfully, if you can't see where you are, you can't see where you are going, you better stop.

THE COURT: That may be.

Let me point out to you a couple of the problems that the previous witnesses -- you have heard some of them, you haven't heard others -- have thought about.

The first problem is that the protuberance of Mystery Point is what compels keeping a little further towards the west bank than you would otherwise prefer.

Secondly, there apparently is a current setting in on this direction to the west.

Third, of course, while it looks to be a straight run like that, if you run straight like that you are coming in pretty close on this Sauk Rock which is one-third the way out on the channel and if you really want to be safe, you will somewhat hug the left side of the channel until about this number 74 and then make a turn coming over to the right bank, but your problem is determining when you are off Mystery Point.

Now, in good clear weather or without ice, all these people seem to know when they are there, but in bad weather, now, ice, particularly when they can't pick up the buoy, they have difficulty telling it and also apparently a low-lying tug has difficulty spotting Con Hook Light until it is up in this area.

THE WITNESS· What I am proposing is, as you pass under the bridge parallel to this bank at a distance of about 300 yards, until you get abeam of this point here, at which time you have a predetermined course you can come around to and head on Sugar loaf Hill, that will take you 300 yards off of Mystery Point.

THE COURT: One of the problems they have with these tugs, however, they don't have Polarises or azimuts and they can't take bearings.

THE WITNESS: The captain said yesterday if he is headed towards Sugarloaf Hill.

THE COURT: If he can see it. The problems develop when they can't see Sugarloaf Hill or the buoy.

THE WITNESS: He can see the bank.

THE COURT: They can't see the bank too well because there is a lot of ice built up and they are not sure where the ice ends and where the shore begins.

I think the very familiar pilots know by the walls of the mountain where the shore is even when there is a lot of ice, but those who are less familiar, particularly when the ice piles up here in this crook of Mystery Point on an ebbing tide which gives the impression Mystery Point is up like this and they go sailing up like that thinking they are abeam of Mystery Point when they are actually running right up on that rock.

THE WITNESS: You have to come off of Sugarloaf beach and start hewing again to the right side.

THE COURT: When it fills up with ice in here, they don't know they are there. They think Mystery Point ends up north.

THE WITNESS: It is unfortunate they don't have instruments because if they took a bearing on Con Hook Light and kept to the right of 015, they would stay in a safe sector.

THE COURT: Again, the problem with that is, apparently these low-lying tugs don't see Con Hook until they are bearing about 015 from it. That is where they pick it up.

THE WITNESS: I dispute that.

THE COURT: That is what the testimony is yesterday.

THE WITNESS: I have contradicting evidence from two commanding officers.

MR. LOSQUADRO: I will object to this.

THE COURT: That is hearsay.

THE WITNESS: Documented in the logs --

MR. LOSQUADRO: I object to this.

THE COURT: Sustained.

MR. LOSQUADRO: Captain Voquarro said if he were at 20 foot height, the brush he observed from the higher elevation, such as on the bridge of the ship, might have obstructed that light.

MR. SCHULMEISTERS: Actually he does not know

THE COURT: Stop arguing with each other.

Q Considering, Captain, your experience as a navigator, tell us, please, what preparation should a navigator do if he were to traverse an area such as from Bear Mountain Bridge northward past Con Hook Island if he were to navigate in that area for the first time?

MR. LOSQUADRO: I object on the grounds he has not been in my opinion qualified as an expert navigating the Hudson River yet.

THE COURT: I don't know that there are any distinctions between navigating the Hudson or any other inland body of water. Do you think there are any great distinctions?

THE WITNESS: No.

THE COURT: You have navigated in inland bodies of water plenty of times?

THE WITNESS: Yes.

THE COURT: Answer the question.

A Standard preparation is to review the chart, the light list, the sailing directions, that is, the Coast Pilot and check the local Notice to Mariners plus talk to anybody you possibly can and, hopefully, take a ride as something other than a pilot or navigator the first time.

MR. LOSQUADRO: I think he is reflecting the government's attitude on this case as a party.

THE COURT: I think he is reflecting the attitude of the Coast Guard who have obligations to preserve navigation and who, therefore, advocate the highest possible standards.

We realize tug boat captains aren't Coast Guard officers or commanders of the Queen Mary and that they may, therefore, not proceed with the same caution.

MR. LOSQUADRO: I disagree. What the appropriate caution is under a given set of circumstances.

THE COURT: That is true, too.

Would you say the needs to do all these things in preparation are greater or less if the voyage is being made at night, if it is snowing lightly, if there is heavy ice in the river and if you are in a tug boat?

THE WITNESS: I would not make the first voyage on a river like this at night, your Honor.

MR. LOSQUADRO: I object to his opinion.

THE COURT: Your previous objection was that you had to consider the circumstances.

MR. LOSQUADRO: It was not a restricted visibility night as I understand the testimony.

THE COURT: Two miles is a restricted visibility.

MR. LOSQUADRO: I think on that river, two miles is as far as you could see.

MR. SCHULMEISTERS: Then you could see the shoreline and what is the problem.

THE COURT: Next question.

Q Captain, you were in court yesterday when ranges were discussed and I believe there was mention of an arrangement or a situation where two range lights are posted in such a manner that when they are visible as if they were one light that that would indicate a point for turning, or starting a turn in the channel.

THE COURT: I don't know why we should bother going back to that.

MR. SCHULMEISTERS: I would like to have the captain explain whether or not such a range is used in navigation.

MR. LOSQUADRO: I am not sure the range has been adequately described. We got a little confused yesterday.

THE COURT: Why don't you describe range lights to us.

THE WITNESS: Let me discuss a glide path indicator, first. It is a device used on aircraft carriers and I attempted at one time to apply it to aids to navigation. It consists of one installation, that is, an installation at one location which has a real light source and a virtual light source projected by lenses out in space and the idea is to keep that projected light source in line with the real light source and to follow the path defined by the line between those two light sources. Therefore, to guide yourself in on a proper angle on landing on a flight deck.

That I believe is the type of range the judge was referring to when he referred to the use of this principle by aircraft.

It would be kind of difficult to describe a range to you without using a blackboard or something.

THE COURT: I know enough about ranges that I don't think it is necessary to do it.

Q Would you make an illustration as to what you are talking about?

A A range is designed to be used in a stretch of the river which is remote from the actual physical installation and it consists of two lighted structures or two unlighted structures and the principle is to obtain noticeable horizontal parallax between the two structures or lights.

Actually, it is noticeable angularly, so when a person is on the extremity, the left or right extremity of the channel, he has a substantial parallax between the two structures or lights.

THE COURT: And if he is in the proper place, the two are aligned?

THE WITNESS: If he is in the middle and middle may be the wrong place to be under certain circumstances.

A range is designed to provide what is called a range sensitivity and the range sensitivity is a measure of the angular parallax as a function of the horizontal distance from the center of the channel.

Now, the calculation of that range sensitivity takes into account the total angular subtends between the lights. That includes both the horizontal and the vertical and to try to design a range so that the two lights would be in line when you reach a particular distance from the front structure, it would be just be too fortunate, too circumstantial to have it come out that way.

THE COURT: I understand that. It would require a particular location where you had a fortuitous geographical situation, but that is only if you wanted to bring both lights into line for purposes of breaking off the range.

However, so long as you got two lights at different heights and apart from each other, you could construct a range?

THE WITNESS: Absolutely. A simpler way to go about this, if you would mark the turning point on the range, would be to put another light on the shore.

THE COURT: Why is it not feasible to put a light on top of Sugarloaf Hill and another one in line by the eastern shore so as to mark the middle of the channel on the run from Ft. Montgomery to buoy 25, or is it merely a question of expense and necessity?

THE WITNESS: It is a question of necessity and expense first. I would say the need is not demonstrated. To spend money for an unknown need is not justified.

THE COURT: How about ecological considerations? Would you get into any trouble from the good burghers of the area?

THE WITNESS: It depends who owns that hill. I might run into some problem with parks aspect of it, using part of the park area.

There would have to be a cutting of trees and there would be a problem in that if you were to construct a range there, youwould have to put the front range close to the pinnacle or do something with the candle power of the back range. You must have candle power between the front and rear range.

So, I would say it would be very difficult to use the present obstruction light on the present structure on Sugarloaf Hill. It would be probably simpler to put a two-structure range or single structure range down lower on the hill closer to the shore, but as I say, there is no demonstrated need for a range.

Most of the traffic with very, very few exceptions, the bulk of the traffic that passes that stretch of river does so safely. One hundred thirty some thousand or forty thousand craft a year with drafts 18 feet and under, most of which do not carry pilots traverse that stretch of river successfully each year.

THE COURT: I take it there is no such thing as a seasonal range, one that would only be installed for winter use and that if there was, there would be no significant savings?

THE WITNESS: No. If you have it, you might as well use it.

Q Incidentally, Captain, on both charts, 282 and 283 which are exhibits -- also 284 -- 282 is Exhibit 13. 283 is Exhibit 14 and 284 Exhibit 15. These are the C.N.G. numbers.

In some places we do find structures that have riprap around them. For example, light 11 in Haverstraw Bay and light 9 and some others.

Do you have any idea, Captain, when were those structures constructed?

A I would take an informed guess and say 1937. In the 1930's. The light list would have the exact date.

Q To your knowledge, has the Coast Guard been constructing such structures on the Hudson River recently?

A No.

THE COURT: Because of the cost factor?

THE WITNESS: Yes, your Honor. These structures were put in at a time when the W.P.A. existed and labor was cheap and material was relatively cheap.

MR. LOSQUADRO: Is that a beacon, Captain?

THE WITNESS: These two structures were lighted beacons.

Q I don't remember if you mentioned it. Have you had experience with a three-foot diameter structure and its capability of withstanding ice?

A Yes. I mentioned this before. Three-foot diameter steel pipe structure. This was in Plum Gut in Boston Harbor.

MR. SCHULMEISTERS: I think that is all I have.

THE COURT: Cross?

CROSS EXAMINATION

BY MR. BESHLIAN:

Q Captain, during your testimony you mentioned, if I am not mistaken, that you sometimes can't pick up or find buoys.

A Would you repeat that?

Q I believe that someplace during your testimony you mentioned that buoys sometimes can't be picked up or found in icy conditions.

A Yes.

Q Does this condition exist in the Hudson River?

A Yes. When you say picked up, physically picked out of the water?

Q No, when you are steering a vessel, detecting or seeing these particular aids to navigation.

A Yes.

Q Does the Coast Guard have any publications or any information disseminated to operators of vessels with respect to these conditions?

A Yes.

MR. LOSQUADRO: Your Honor, we have been through this. We understand and agree and I think it is in evidence that most mariners are familiar with this. It is in government publications.

THE COURT: I don't think he is talking now about the general warning about not trusting buoys because of being off station because of ice. I think he is going to a particular reference to the Hudson River as being an area in which buoys are obscured by ice.

MR. BESHLIAN: That is correct and that this is general knowledge.

THE COURT: Forget the general knowledge.

Is there something in the light list or other periodicals with reference to ice conditions on buoys in the Hudson.

THE WITNESS: Your Honor, there are several services that the Coast Guard provides. One is a safety broadcast to mariners. When a discrepancy or a condition such as ice or a buoy discrepancy or discrepancy in a fixed light is reported to us, either by a private citizen, a pilot or tug operator or what have you, by our own people, we immediately publish a safety broadcast and notify the servicing vessel to tell him to take care of it, the servicing vessel to take care of it.

If this problem persists through the Wednesday of a week, it is published in a document called "Local Notice to Mariners," delivered to 10,000 addressees including the Tow Boat Association which makes sure it is distributed to all the tug boat operators.

As I say, there is a list of addressees of 10,000.

THE COURT: I think he is thinking of the Coast Pilot.

MR. SCHULMEISTERS: I have my own copy.

THE COURT: Mr. Losquadro, you took the Coast Pilot that is in evidence.

THE WITNESS: In the Coast Pilot there are words of wisdom about particular persistent problems or seasonal problems.

For instance, in some areas where the currents are particularly swift, there may be a precaution in here of mariner's wisdom, something saying that buoys may drag under, for instance, in that particular location, although that is a problem we try to correct.

THE COURT: Look at page 235 concerning the Hudson.

THE WITNESS: There a particular section?

I have read it.

Q Captain, there is a specific instruction or direction with respect to the Hudson River.

A With respect to ice conditions?

Q Yes, that might possibly be met in the Hudson River during the winter months?

A Yes, generally.

Q Was a similar notice sent out every year to mariners or just left to the Coast Pilot publication?

A No. A similar notice is not only sent out every year, it is sent out every day that there is ice which might affect the buoys in particular. It is part of the ice broadcast.

Q And I believe you said in response to a question before starting out on a voyage under conditions set forth in suit, that you would not attempt to navigate a river at night in snow with limited visibility; is that correct?

that you never navigated this water, did you ask Mr. Kiernan for danger spots and things to look out for, but I don't recall that either side or any side, since there are three sides to this melange, did and if I am wrong about that, please call it to my attention but I read both depositions and that is my recollection.

MR. BESHLIAN: Your Honor, is the captain permitted to answer the question?

THE COURT: What is the question?

MR. BESHLIAN: I would ask the reporter to go back.

A Yes.

Q Am I also correct that you said in navigating in waters like that, you wouldn't rely on buoys but would look for landmarks or other prominent features in the area to navigate?

A That is correct.

Q How would you acquire the knowledge of these landmarks or other features?

A As I mentioned before, by riding the vessel as a passenger or observer during daylight.

Q Through experience?

A Yes.

Q Would you expect an operator of a vessel to take this into consideration when assigning jobs to specific vessels or men to specific vessels?

A I do.

MR. LOSQUADRO: I don't think this witness should be asked these questions.

THE COURT: Overruled. He is being cross examined by the defendant.

MR. LOSQUADRO: He is being used where there is a common interest by the attorney representing the party holding the common interest.

THE COURT: Overruled.

THE WITNESS: Your Honor, I have done this just this year.

THE COURT: Done what?

THE WITNESS: I have required the commanding officer of one of our cutters to ride as a passenger on another cutter on a familiarization cruise of the Hudson River in wintertime so he knew the precautions for operating in ice.

THE COURT: The question put to you was: do you think owners of tug boat companies have an obligation to see that the steerers, as they call them, who take their tugs upriver in the winter at night, have sufficient familarity to navigate the waters?

MR. LOSQUADRO: That answer is going to be terribly self-serving.

THE COURT: Probably.

MR. LOSQUADRO: Your Honor, the Mate Reimer has indicated he has been in ice before.

THE COURT: It isn't a question of the ice. It is a question of the Hudson River.

A If I were to say no to that question, I would be stupid. The answer to that is absolutely yes and they have increasing responsibility concerning the navigation. If they are talking about sand and gravel or some inert material that would just maybe obstruct the channel for a couple of days, that can be taken care of but when they are talking about dangerous cargoes, when they are talking about polluting cargoes, I think it is utterly irresponsible to do such a thing.

MR. LOSQUADRO: Your Honor, I think this is terribly self-serving. It is not responding to any question and if the Coast Guard has this belief, they should do something about it.

THE COURT: I sustain your objection.

Q Are you familiar with the manning requirements of the tug boats?

A No.

Do you feel that the incidents preceding it are so dissimilar as to not create any particular warning?

A The incidents preceding the Ocean Prince grounding --

MR. LOSQUADRO: He is going to testify to a legal issue in this case which is notice. It is a legal question and I don't think he should be permitted to answer that.

THE COURT: You asked him the question.

MR. LOSQUADRO: You said he can elaborate on it -- let's let it go.

MR. SCHULMEISTERS: I object to cutting off like this.

MR. LOSQUADRO: I am losing control of my cross.

THE COURT: Your objection is overruled. The question isn't even pending any more.

MR. SCHULMEISTERS: Frankly --

THE COURT: We will start again and I will ask the question.

Is there a sufficient pattern in the groundings of the Sauk, the Sassafrass, Turecamo, the Ocean Prince, and the Ethyl H to reach any conclusions about dangers in that area?

THE WITNESS: No, your Honor, there is no sufficient commonality of cause to justify the need for a change in aid to navigation.

MR. LOSQUADRO: That is the witness' opinion.

THE COURT: Yes, obviously.

Q Captain Glass, hasn't the maritime community requested that alternate aids to navigation be established at or near that rock as recently as this year?

A I am not aware of that.

Q Captain, the prior testimony in this case is that Mate Reimer who was the operator of the tug Ocean Prince that night had been on the river before, he was the navigator but --

MR. SCHULMEISTERS: Objection.

Q For purposes of the navigational points of reference, wouldn't a chart fill in that information point, whatever additional information he needed?

MR. BESHLIAN: Your Honor, to answer that question, the captain should be also advised he was a deckhand for approximately six years before he took this trip.

THE COURT: That is important.

MR. LOSQUADRO: He also testified as he approached this area he knew about that rock, he was looking for it, he slowed down when he didn't see the buoy, he was trying to determine his location in the river --

THE COURT: Don't argue. Put a new question and include in it the one trip as a deckhand was made six years a steering guide?

A Yes, during the captain's testimony.

Q Did you know about it before then?

A No.

THE COURT: Let's get it clear.

So far as you know, there is no light on top of Sugarloaf Hill?

THE WITNESS: No. I think I misread the chart. I have to blame it on lack of glasses.

Q In view of the fact pilots seem to use Sugarloaf Hill as a range, wouldn't you agree that they think one would be helpful there?

A They don't use it as a range, they use it as a steering point.

Q Don't you think a steering guide would be helpful there?

A There is one there naturally.

Q What about if you can't see it?

A If you can't see it, there is no guarantee you could see one that you manufacture.

THE COURT: His point is there are lots of atmospheric conditions when you can't make out the topography two miles away such as the top of Sugarloaf Hill but you would be able to see a bright light if one were put there; am I correct?

MR. LOSQUADRO: I was reviewing my notes.

MR. KIMBALL: You are correct, your Honor.

THE COURT: That wouldn't be a very expensive proposition, would it?

THE WITNESS: No, sir.

MR. LOSQUADRO: That is all.

THE COURT: Any further questions of this witness?

MR. BESHLIAN: No.

THE COURT: The witness is excused. We will take a brief recess.

(Recess)

THE COURT: Call your next witness.

MR. BESHLIAN: Your Honor, can Mr. Stillwaggon be relieved for tonight. He has a ship that has to sail at six tonight.

THE COURT: How long is your next witness?

MR. KIMBALL: Very short.

MR. BESHLIAN: I don't want to hold him up. Counsel agreed we can take him out of turn tomorrow.

THE COURT: Okay, let him go.

MR. KIMBALL: Your Honor, we would call as our next witness Mr. Malcolm MacLeod.

Q Does your statement make any reference to the obstruction marked by can buoy 25 on the Hudson River?

A Yes.

Q Can you tell us what it says?

THE COURT: You can't do that.

MR. SCHUIMEISTERS: May I now see it?

THE COURT: Are you offering the document or not.

MR. KIMBALL: I will offer it.

THE COURT: Show it to your adversary.

(Plaintiff's Exhibit 36 marked for identification.)

THE COURT: Do I take it this witness is in place of John Garrett?

MR. KIMBALL: No, sir. This is a witness, your Honor, we did not know we would be presenting until today.

THE COURT: Are you going to present John Garrett?

MR. BESHLIAN: Mr. Garrett is my witness, your Honor.

MR. SCHULMEISTERS: No objection.

MR. BESHLIAN: No objection.

(Plaintiff's Exhibit 36 received in evidence.)

MR. KIMBALL: No further questions, your Honor.

THE COURT: Cross examination.

CROSS EXAMINATION

BY MR. BESHLIAN:

Q Mr. MacLeod, I don't think it was established. What is your position with Moran?

A Manager of harbor operations.

Q What does it entail?

A The overseeing of all our tugs in the New York area which includes the Hudson River, Long Island Sound, Connecticut River and trips to the ocean dupming area, crewing, manning.

Q When you say overseeing --

A That includes the dispatch of tugs, the men who man the tugs, union negotiations.

Q Does Moran have any specific qualifications--

MR. KIMBALL: I object to this line of questioning as going far beyond the direct examination.

MR. BESHLIAN: I will make him my witness.

THE COURT: All right, he is your witness now.

MR. KIMBALL: Mr. MacLeod, do you want to appear as this man's witness?

THE COURT: He can be served with a subpoena.

MR. KIMBALL: If he can write it up.

THE COURT: We will not play that kind of game.

MR. KIMBALL: Your Honor, may we approach the bench?

THE COURT: All right.

(At the bench.)

(Witness leaves room.)

MR. KIMBALL: Your Honor, we called this man for the limited purpose of introducing a document which indicates that a grounding occurred at the location of the obstruction marked by Buoy 25 and to submit a letter that he sent and actually presented in statement form the request of an assemblyman with specific reference to the inadequate aid marking the rock.

We will object to any questions which go into the licensing requirements, hiring requirements, anything of that nature.

THE COURT: I don't think all this business about licensing has anything whatever to do with this case. For that matter, the only thing that has anything to do with this case is the last paragraph of the second page and let me tell you, Mr. Schulmeisters, if you objected to the introduction of the letter, I would have sustained it.

MR. SCHULMEISTERS: Frankly, your Honor, I think quite a bit of it has to do with this case in the other paragraphs where especially he puts this document in evidence saying we have licensed pilots with ocean experience, et cetera, et cetera. I think that is relevant to this case.

MR. KIMBALL: It is irrelevant, your Honor.

MR. SCHULMEISTERS: That is very much relevant.

THE COURT: What they are saying is, by offering this letter, you have opened the door.

MR. SCHULMEISTERS: Precisely the point.

THE COURT: Now I understand why you attempted to have him read the portion you wanted.

MR. KIMBALL: The only reference in there to this type of area is present day qualifications which has nothing whatever to do with whatever requirements might have existed in '74, if I can, what I would like to do is restrict the offer to that one paragraph.

MR. SCHULMEISTERS: Definitely not. If there is any restriction, definitely I object all the way.

MR. KIMBALL: It is of great prejudice to this man and it is going to prolong the conduct of this trial unnecessarily.

THE COURT: Let me suggest to you you withdraw the offer of the letter completely.

MR. KIMBALL: I withdraw it.

THE COURT: We will strike No. 36 from the record. It is not accepted in evidence.

MR. BESHLIAN: Your Honor, this is something that has been on the record. He was admitted into evidence and you are allowing him to withdraw it. He has opened up the door for questions concerning Moran's practices in putting men on the river.

MR. KIMBALL: I have not.

THE COURT: Not with the exhibit withdraw and it has been withdrawn.

MR. BESHLIAN: Then I withdraw the fact I have made this man my witness.

THE COURT: Sure.

MR. SCHULMEISTERS: I would like to state now an objection for the record.

This is the second time during this trial when all of a sudden we are coming into something which may be prejudicial to plaintiff because of some evidence coming out that indicates that maybe the operation or some of the groundings may be due to negligence. Number one was when I started asking about the Ethyl H incident. Mr. Kimball got up and said no subsequent accidents, no subsequence occurrences, therefore we stopped questioning.

Commander Blumbquist --

THE COURT: If you are making a motion or an objection state it, but get to the point.

MR. SCHULMEISTERS: With this background, then

Commander Blumquist left and as soon as he left --

MR. KIMBALL: You are free to call the man and ask him any question you want.

MR. SCHULMEISTERS: We started allowing all kinds of subsequent incidents.

MR. KIMBALL: Not all kinds. Only those set forth within the criterion.

THE COURT: If you have a motion or an objection, get to it.

MR. SCHULMEISTERS: I move, your Honor, that all the subsequent incidents be stricken, basically right now in two instances. The way I see it, when it gets to a point of being prejudicial to the plaintiff, then the offer or partly introduced evidence is taken back and stricken.

THE COURT: Motion denied.

Bring the witness back in and confine your cross examination to the one point that he was allowed to testify on.

MR. BESHLIAN: Your Honor, before we bring him back in. I think the Court can direct that he appear here as a witness, a subpoena that I would prepare would be issued in the name of the Court and in view of the fact the man is here, we are entitled to use him and elicit from him that which is favorable to my case.

further. I am reserving decision, but if you know of any cases that fall into this area and there may well be none, because this is a situation somewhat peculiar to tugboats, but I don't know, there is probably a lot of tugboat litigation too.

MR. SCHULMEISTERS: Your Honor, I think the length of the voyage shows that Reimer was going to be standing and the other fellow was going to sleep and one of the cases I cited did have this type of situation and limitation was broken.

THE COURT: Maybe.

Let's get this witness out of here because I think he is going to be brief.

Have him take the stand.

MR. BESHLIAN: I call Malcolm MacLeod.

MALCOLM MAC LEOD, called as a witness on behalf of Defendant Pittston, having been previously duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BESHLIAN:

Q You are employed in the Operations Department of Moran Towing?

A That is correct.

Q Are you familiar with the general standards of the industry in hiring personnel?

THE COURT: As of 1974?

Q Yes.

A Yes.

Q Have you been associated with Moran for how many years?

A 22.

Q How many years have you been involved in operations?

A Operations in New York since January 1, 1970, same job.

Q What are the general standards for employing a man to steer a tug in the towing industry?

A He has to have a license sufficient for the boat -- you are talking about pilot house personnel?

Q Yes.

THE COURT: Back in 1974.

A I would rather talk about the practice I know about. In Moran we always required licensed personnel in the pilot house, even before the operators -- even before it was a Government requirement.

Q How about the conditions of the harbor and the rivers that the men were supposed to meet? Did you require that men had knowledge of these conditions? Does the industry as a whole know the various pitfalls and problems that result from navigation of the vessels in and around New York Harbor?

MR. KIMBALL: Objection. He has not established that the man has knowledge.

THE COURT: I think he may have done that but the answer to the question is what?

THE WITNESS: It is a very broad question.

THE COURT: Next question.

I will put the question for you because this is moving at an incredibly slow pace.

Would it be considered within the industry standards as of 1974 to have a steerer on a tug going up the Hudson at night in February with ice and light snow or flurries who had never steered the river before and who had been up the river only once as a deck hand six years previously, if there was also aboard a highly experienced steerer?

THE WITNESS: That may be possible, if there was another man aboard who was regularly employed in running the river, this second man might not be completely familiar with the river.

Q Mr. MacLeod, in answering the Judge's question, did you take into consideration that the other man aboard would have knowledge of the fact that his co-worker had no experience?

A In the river. He should know that.

Q He should know that?

A Sure.

Q Would your answer be different if I tell you to assume that he had no knowledge that the man had no experience?

MR. LOSQUADRO: By no experience, you mean the man had not been to that area before?

MR. BESHLIAN: Yes, under the circumstances he has set forth in June Goettel's question.

MR. LOSQUADRO: The nature of that man is experienced and his background and his record with the company have to be included.

THE COURT: The man was an experienced steerer of tugs in southern waters. He had just come back from vacation that night. The experienced man in the Hudson waters had only come on the day before. The two of them had a total of five ot ten minutes general discussion, not about navigation,before they started up the river. There was confusion amongst them as to which one was the master and the experienced navigator in the Hudson River did not know that the other man had not been up the Hudson as a steerer.

THE WITNESS: He should have told him he wasn't experienced, in my view.

Q Would this be something that the Operations Department of the company would be concerned with?

A Yes, sir.

CROSS EXAMINATION

BY MR. SCHULMEISTERS:

Q On a voyage from Bayonne up to Kingston, approximately how long would it take a tug of 1800 horsepower pushing approximately 295 foot fully loaded barge.

A To Kingston?

Q Yes.

A I don't know. How many miles is Kingston, offhand?

THE COURT: Make a rough approximation.

A A 1800 horsepower, 295 foot barge.

Q With ore.

A He ought to be able to make 6 knots divided by the distance.

THE COURT: That is the problem, nobody knows what the distance is.

THE WITNESS: Kingston is about 5,6. I don't remember offhand.

THE COURT: I think it is more. It is about a 12-hour trip.

Q Would it be reasonable that the men would be switching off and standing 6-hour watches?

A It is normal practice to stand 6-hour watches.

Q When one is standing a 6-hour watch, the other one normally goes down below and sleeps?

A That is correct.

Q That is the usual procedure?

A Yes.

Q Did you take that into consideration in answering the hypothetical, the question that the Judge put to you?

A I did.

Q Or did you consider that the experienced man would be standing next to the unexperienced man?

A Everybody has to go to a place one time and there is always a first time for every place and normally the more experienced man shows the inexperienced man the way, even though he is being up off watch and not paid overtime but he does do it.

MR. SCHULMEISTERS: Thank you.

THE COURT: Cross examination?

CROSS EXAMINATION

BY MR. LOSQUADRO:

Q Mr. MacLeod, is there a practice on board your tugs whereby the man on watch would break out the man not on watch if he deems it necessary?

A Yes.

Q Does it make any difference whether the man in the pilot house is the captain or the mate at the moment?

A It wouldn't, no.

Q In other words, the mate can break the captain out and the captain can break the mate out if he wants him?

A That would be possible.

Q In considering where you will send your boats and your men, to places where they might not have been before, do you consider the background of the particular man if he hasn't been there fore and the level of performance he obtained for you?

A Yes.

REDIRECT EXAMINATION

BY MR. BESHLIAN:

Q Mr. MacLeod, would the Operations Department be involved in the assignment of an experienced man to assist the unexperienced man on his first trip?

A Yes.

Q That is something they should do?

A Yes.

MR. LOSQUADRO: Would you read that back?

(Record read.)

THE COURT: Everybody done?

insurance. I don't believe it is insurance as an owner of the place on product that belongs to him, giving the underwriter the right of subrogation. I believe what we are talking about is liability insurance.

THE COURT: Either way, the cargo owner has lost his title to the claim. He has been made whole. If he were made whole pursuant to a loan receipt, the insurer or Pittston, as it may be, might be able to pursue the claim in his name. But, de facto, he has lost, he has exchanged his chose in action for a payment.

MR. LOSQUADRO: We have requested assignment, subrogation or any similar document showing Pittston's right to bring that cargo claim and honor --

MR. BESHLIAN: He has requested a bill of lading which we said we can't find --

THE COURT: I have heard enough on this point. I will consider that later on. Let's get rid of these true liability witnesses.

JOHN BOGE, called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BESHLIAN:

Q Mr. Boge, what is your full name?

A John Boge.

Q Where do you live, sir?

A 1681 Laurelton Street, Bricktown, New Jersey.

Q By whom are you employed?

A Pittston Marine.

Q In what capacity?

A Bargeman.

Q Pardon?

A Tankerman.

Q For how many years have you been employed as a tankerman by Pittston?

A About five, six years.

Q For how many years have you been engaged as a tankerman by other companies?

A As a bargeman, I say about 15 years, all told.

Q What other companies have you worked for?

A I worked for Gehagan and Dredging Company, Great Lakes Dredging Company, Arundel Dredging Company. That's about it.

Q And Pittston Marine?

A Right.

Q Is Pittston Marine the only tank barge corporation that you worked for?

A No. I also worked for Reinauer.

Q What are the duties of a bargee or tankerman?

A His duties are to load and discharge the barge.

Q Do you have any duties other than that with respect to the barge?

A General maintenance.

Q What does that consist of?

A Such as scraping and chipping and painting.

Q Do you make any mechanical repairs?

A Not really. It happens.

Q It would be minor --

A Minor things.

Q Does a bargee have any navigational duties, any duties when the barge is underway?

A No.

Q What are his duties when the barge is underway, sir?

A That would come under general maintenance.

Q Normal housekeeping duties, would you call it?

A Yes.

Q In 1974 what barge were you assigned to?

A New London.

Q Can you describe the New London for us? By that I mean, can you give us her approximate length, beam, draft?

A It is 300 feet long, I think, or close to 300 feet, Q Does the bow of the tug fit into a part of the barge?

A It fits into the notch, yes.

Q When it is made up, it is almost like one unit, is that correct, sir?

A Right.

Q Were you on watch when the voyage started?

A I believe I was just getting off watch. I am not sure. It was so close to watch change that I imagine we were both there.

Q Can you tell me what you did after you got off watch and the voyage started?

A We had supper and then we went to bed, the two of us.

Q Can you tell me about what time that would have been, when you went to bed?

A Probably around 2000; around eight o'clock.

Q Did you go to sleep then, sir?

A Yes.

Q What happened after that?

A I woke up with a bang. I thought at the moment that we hit a solid piece of ice, or something, since we were going through ice. So I got up to investigate. When I was getting dressed, the deckhand from the tug came down and hollered down the hatch and said, "We think you have a leak." By that time, Jackson, the captain, was up, too.

Q Who was Mr. Jackson, sir?

A The captain on the barge.

Q Was he the other man assigned to the barge with you?

A Yes.

Q Is Mr. Jackson still employed by Pittston?

A No. As far as I know, he is retired.

Q Do you know where he lives?

A I believe he lives in California.

Q After you say you and Mr. Jackson got up, what happened then, sir?

A Well, we went up on deck to check the tanks, check for a leak.

Q How did you accomplish this?

A We started the after tank, which was the nearest one, number eight. I took one side and he took the other side. We went up to the fore peak to check each --

Q What side did you work?

A I was on the port side.

Q So Mr. Jackson was on the starboard side?

A Right.

Q You started to work forward?

A Right.

Q What did you discover?

A I discovered a leak in number two and number one port and also in the fore peak.

Q What is the fore peak?

A The fore peak, it is an empty compartment in the forward end of the barge.

Q What is the purpose of the fore peak?

A I would say it is a flotation, what keeps the barge afloat.

Q When you discovered the leaks you say in one and two, was any action taken by you and Mr. Jackson?

A Yes. It so happened we didn't have a full load, we had two empty compartments, number three starboard and number six port were empty. So we proceeded to transfer cargo from the leaking tanks into the empty compartments.

Q Were you able to accomplish this?

A After awhile we found out that we are not making no headway. The water --

Q How would the transfer be accomplished?

A By our pumps.

Q Is there any gravitational flow employed?

A I believe I started gravitating before I started the machine, to save time. I opened the empty tanks and the

THE COURT: I think that may be so, but then the entire contents of those two compartments would have been dumped into the Hudson River, whish is a no-no.

MR. LOSQUADRO: No, not if a water seal is created at the opening. Oil is lighter than water and the water would have held the oil from coming out.

THE COURT: That wasn't happening. In fact, the oil had run out at least down to water level.

MR. LOSQUADRO: Some of it will run out.

THE COURT: Some had run out. You are arguing that if they left it alone at that point, there would have been no further discharge of oil from those tanks?

THE WITNESS: The barge would have sank.

MR. LOSQUADRO: I am not sure about that, sir. It is a salvage procedure that I am familiar with.

THE COURT: If you want to put it in evidence, put it in evidence.

MR. LOSQUADRO: Any objection to this going in evidence?

MR. BESHLIAN: No.

xxx (Plaintiff's Exhibit 37 was received in evidence.)

CROSS EXAMINATION

BY MR. SCHULMEISTERS:

Q Mr. Boge, have you served on barges that have been pushed by Red Star tugs in addition to the New London?

A Yes, many times.

Q Have you ever been called out as a lookout?

A No.

Q Whenever pushed by a Red Star tug?

A No.

Q The second question, which is, kind of obvious there did leak oil into the river, did there not?

A Yes.

MR. SCHULMEISTERS: Thank you.

THE COURT: You are excused.

(Witness Excused)

(Recess)

JAMES G. STILLWAGGON, called as a witness by the Defendants, being first duly sworn, testified as follows:

THE COURT: Some day we are going to have a few witnesses who are listed in the pretrial order, instead of a lot of additionals.

MR. BESHLIAN: I am sorry Mr. Stillwaggon was not listed by name. I listed an expert.

THE COURT: He is your expert on what?

MR. BESHLIAN: On navigation, sir.

THE COURT: Okay.

Q What is your address?

A 46 Tenafly Drive, New Hyde Park, New York.

Q What is your occupation?

A I am a pilot.

Q Do you belong to any associations?

A I am the president of the Interport Pilots Associates, Inc.

Q What types of vessels do you pilot?

A We handle all ships up to and including V.L.C.C.'s.

Q Including?

A V.L.C.C.'s. Very large crew carriers.

Q Do you hold a license?

A Yes, I do.

Q What does your license encompass?

A Master, bay, sounds and rivers, 1250 gross tons; first-class pilot, any vessel, any tons, New York Harbor, Hudson River, State Barge Canal System, Lake Champlain, Newark Bay and tributaries, Jamaica Bay, Rockaway Inlet, East Rockaway Inlet, East River, Long Island Sound and all its ports, Block Island Sound, Rhode Island Sound, Cape Cod Canal --

THE COURT: Enough, enough. You have convinced me.

Q When were you first issued a license?

A 1942.

Q What was the nature of that license?

A That was a 250 ton pilot license for tug boats in New York Harbor and the East River to Stepping Stone Light.

Q Was a license required for tugs in 1942, did you say?

A That's right. All of the tugs or most of the tugs at that time were steam tugs and every steam tug required a pilot's license to operate it.

Q From there on in you improved on and increased the pilot conditions, not conditions, but pilot endorsements on your license?

A That's right. In 1944 I received my master's license for inland, and then continuously added extensions of route on my license.

Q What about your ship handling experience, sir? Could you describe that for us?

A In 1945 I began to ride with the pilots in the Harbor learning to dock ships, and at that time I was able to get a license for unlimited tonnage as a pilot. In about 1958 I left the tug boats and went into piloting as a coast pilot, harbor pilot. In the sixties I went down to St. Croix, the Virgin Islands, and I worked down there as a pilot, instructing pilots in ship handling. I served as a consultant to several companies on pilotage matters. In 1974 I became a consultant and instructor on the ship-handling simulator at LaGuardia Field. I served in the Hudson River with the Texaco Company as a pilot instructor. When I was doing the Texaco ships we always had a couple of Texaco pilots aboard, and I was breaking them in to take over the work when I left it.

Q Do you serve on any committees relating to piloting and its problems?

A I am on the executive and advisory committee to the United States Coast Guard in its vessel traffic system.

THE COURT: For what area?

THE WITNESS: New York and the Delaware River.

THE COURT: By "New York," you mean merely the harbor or you include the Hudson River?

THE WITNESS: It includes the whole Third District, actually.

Q The ship-handling instruction device that you mentioned, Mr. Stillwaggon, what is that?

A This is a unit based on a computer in which we teach captains and pilots and mates how to handle ships, and we can put any size of vessel into the computer. Right now we are teaching the approaches to and the piloting within the harbor of Milford Haven and Wales where I worked last year with the pilots to set this thing up. We also teach the Ras at Tannura Complex in the Persian Gulf. We are going to teach all of the L.N.G., El Paso people, ship handling for the Savannah River and Chesapeake Bay and Algeria docking facilities.

Q Is it a device that duplicates or gives you a picture of the area that you are going to be working in

A Yes. Actually, it is the bridge of a ship facsimile, and it shows a screen of 140 degrees, and it reacts exactly like a ship does. In fact, it is so good it is scary. It is so much like a ship that the people who have gone through the course react the same as a man would do in emergency situations. For instance, we have the ability to give him a rudder malfunction or engine malfunction without notifying him, and we see how the man reacts to it. We also inject fog into the screen and we see if they abide by the rules of the road when they become fogbound, et cetera.

Q You are one of the instructors that helped develop this system?

A Yes, I am the instructor. I helped to develop it with Sperry and with the Marine Safety Corporation.

Q Have you had any experience in the tug boat business?

A Yes. I was a captain on a tug boat from 1942 until about 1956, '57, '58, in that area. I began to leave the tug boats at that time to go into piloting so that it was around that time that I left.

Q In what waters were you engaged with the towing operations?

A I started in New York Harbor, and in each area where I made more trips as an observer pilot, I acquired the license for it, and I extended my work into Long Island Sound and the Hudson River and the New York State Barge Canal System and Lake Champlain.

Q So you are somewhat familiar, then, with the Hudson River and the problems that a tug boat would face?

A Yes, I know it.

Q Did you have any position in a managerial capacity with the tug boat company, or any tug boat company?

A In 1942 I was a dispatcher for the Russell Brothers Towing Company in New York.

Q Mr. Stillwaggon, you have been in court several days and you have heard some of the testimony given in this trial?

A Yes.

Q Are you familiar with the area which is presently marked as buoy number 25 on the coast and geodetic chart somewhat south of Con Hook Island?

A Yes, I am.

Q Have you navigated in that area?

A Yes, I have.

Q Have you navigated in that area in the wintertime with somewhat restricted visibility, maybe a mile, mile and a half to two miles?

A Yes.

Q Snow flurries falling?

A Yes.

Q On a dark evening?

A Yes.

THE COURT: Nighttime with ice in the river?

THE WITNESS: All those conditions.

Q You have, sir?

A Yes.

Q In your experience are you familiar with the buoys and the aids to navigation that are placed throughout that area?

A Yes.

Q Can you tell me what you can expect to meet at that time, under the conditions we described?

A You are talking about the wintertime?

Q Yes.

A Well, you don't expect to see chained buoys in the areas where they are supposed to be located at all times.

We know that the ice drags buoys away from their station and also covers them sometimes completely for all the period of the ice in the river, which is usually a month, anywhere from a week to a month that the river is filled with ice. Pilots realize that all of the buoys are not expected to be in place during the flowing ice, and I have seen that in that same area.

Q What do you use to navigate under the conditions that we described, sir? How would you navigate through those waters?

A Are you talking about a ship or a tug boat?

Q A tug boat.

A If I was on a tug boat there, I would, with the new tugs that they have with the radar on them, I would have the radar on, I would have the searchlight in operation, and, of course, knowing the river, being familiar with that area, I would disregard or not worry too much about finding that buoy which at that time would be a black can buoy in the wintertime, and I would stay away from that side of the river. There is a light on the point of Con Hook which is usually visible. The bluff on the right side going up the east side of the river is quite sharp, and at most times you can see the shoreline all the way up, anywhere up the river from there on.

Q Is this true even when there is ice in the river, sir, you are able to pick up the shoreline?

A Yes.

Q How do you get this, you say, bluff and the shoreline and the experience that you can pick out these various landmarks, how would you do that, sir?

A Just having made the trips up and down there all of these years, it just takes experience, and, of course, there is no substitute for experience, operating in waters.

MR. LOSQUADRO; I object, your Honor. The last time he was on a tug, as I understand it, is 1958. I believe he is talking about piloting large ships.

THE COURT: Not necessarily. He hasn't indicated that he is talking about current conditions. He is talking about general pilotage problems and specifically having taken a tug in this area back in the forties and fifties, I don't think the river has changed its configuration since then, has it, Captain?

THE WITNESS: Absolutely not.

MR. LOSQUADRO: I am not suggesting it has.

THE COURT: For that matter, the aids are fairly similar to the way they were.

THE WITNESS: The aids are the same as they were in the forties.

THE COURT: Assuming the conditions we described how would a tug boat steerer who was not familiar with the area, except for one trip as a deckhand six years earlier, proceed?

THE WITNESS: Under the conditions that we are talking about, if it were me, I would not proceed alone in the wheelhouse.

THE COURT: You would look for someone who is familiar with the river and its problems?

THE WITNESS: Yes.

BY MR. BESHLIAN:

Q Mr. Stillwaggon, when you worked as a dispatcher, were there considerations given to a man's experience in an assignment to various jobs, tugs?

A Always.

MR. LOSQUADRO· I am sorry. I didn't hear the question.

(Record read)

MR. LOSQUADRO: Could we have a definition of "experience" from the standpoint of navigating ability, from the standpoint of familiarity --

THE COURT: Are we talking job ability or are we talking geographical experience or are we talking both?

THE WITNESS: Both.

the fellow has to get out there and do it to learn to be a pilot.

THE COURT: So in your opinion, since the river hasn't changed and people are still people, the pilots taking tugs -- and by pilots I mean steerers, mates and captains -- taking tugs up the Hudson River in 1974 were basically the same in terms of qualifications as people who were doing it in the forties and fifties?

THE WITNESS: I hope they would be as qualified as the men were in the forties and fifties.

BY MR. BESHLIAN:

Q Mr. Stillwaggon, do you recall the set of facts that we gave you at the beginning of your testimony with respect to the conditions on the water?

A Yes.

Q In the wintertime, the ice, and so forth?

A Yes.

Q If we add to that that there is a man who has a license issued approximately seven or eight months -- an operator's license issued approximately seven or eight months prior to February 2, 1974, who has had several years of tow boat experience, all of it in southern waters --

MR. LOSQUADRO: Objection, your Honor.

THE COURT: That's not quite accurate. He has had a little northern experience, but never in the Hudson River.

MR. BESHLIAN: Excuse me, you are correct.

MR. LOSQUADRO: Also, he has been handling tugs for five years, as a steerer --

THE COURT: Make it five years, primarily southern, little northern.

MR. BESHLIAN: One trip in northern waters --

MR. LOSQUADRO: He has been up to Philadelphia, Delaware River, Boston.

THE COURT: Consider that.

THE WITNESS: Yes.

MR. LOSQUADRO: As a steerer. He has been to New York before on boats, but not as a steerer.

MR. SCHULMEISTERS: Not in the Hudson.

MR. LOSQUADRO: Yes.

THE COURT: He went up the Hudson six years earlier and he was a deckhand.

Q He was a deckhand on the Hudson River six years earlier.

THE COURT: One trip.

Q He worked as a deckhand on vessels that were in the Hudson River, that he had never navigated or piloted or steered, I guess would be the better word, through the Hudson River, and that he was assigned to a vessel which was assigned a job to tow a barge through the Hudson River, the voyage which would have taken at least two watches, assigned on the tug along with him was another man who was an experienced navigator; that there was some confusion as to who was the superior officer or captain of the vessel, and that there was no information given to his co-worker with respect to this man's lack of experience.

Do you think that an assignment of this type in your opinion -- is an assignment of this type one that would meet the normal and usual standards of the industry?

MR. LOSQUADRO: Objection. I do not agree that there was confusion on February 2, 1974.

THE COURT: I think you can modify the confusion aspect to be that there was at least confusion in the mind of the experienced navigator. He did not understand that he was to be captain. What the company may have thought there is no evidence of.

MR. LOSQUADRO: I suggest also that we do not agree that there was confusion even in his mind on February 2, 19 --

THE COURT: You don't have to agree. Mr. Kiernan so testified. Certainly there is evidence to support it for purposes of asking a hypothetical, there is adequate proof of it. With all of those modifications, what is your opinion?

THE WITNESS: I don't want to ask to have the question read, I think I know what i[illegible] intended. I would say, based on what I have heard in the courtroom and ba[illegible] on a question as lengthy as it was, I do think that a man should not be assigned or should not take an assignment on a particular job in an area for which there is a chance that he might get in trouble with his vessel. I don't think that comes under the heading of prudent seamanship to do such a thing. Where the responsibility lies completely for that man doing that job, I don't know, but I do know that if you were asking me and I was working under that circumstance, if I was the inexperienced man, I would not do it. If I was the experienced man, I would not allow the other fellow to do it.

THE COURT: Part of our hypothetical to you is that these two steerers got aboard the boat within a day of each other, and they had had one or two limited conversations of five or ten minutes each, so that the experienced man knew literally nothing about the inexperienced man and apparently because he did not view himself as being the captain felt no obligation to find out.

THE WITNESS: I don't think that I would ever be in that position, because if I was assigned to a boat, I would know whether I was the captain or the mate, definitely.

Having been assigned, it is difficult to understand that the people didn't discuss it too much because tug boatmen are garrulous by nature. There is a lot of chitchat that goes on.

THE COURT: This voyage commenced, though, within an hour or two, I think, after the arrival of Mr. Reimer. How long a period did he get aboard?

MR. LOSQUADRO: We believe he boarded at Bushey Yard, which was that afternoon, your Honor.

THE COURT: They took off very shortly thereafter.

MR. LOSQUADRO: The tug ran light from that place across the harbor to Arthur Kill -- Kill Van Kull.

THE WITNESS: Not to digress from this, but I would think that somewhere in this greeting between the two people when they come aboard, "I am Joe;" "Hello Jim," I think someone should say, "Have you ever been here before?" The guy might say, "I was up there once as a deckhand a few years ago," which if I were the experienced deckhand, it would raise an alarm in my system and I would say to him, "If you need help, make sure you call." I might even point out the various places where I would expect him to call.

THE COURT: It appears, although one must try to draw inferences, it appears that some of their confusion was caused by the fact that the experienced navigator was on loan from another company, the first time he had ever been on loan like this, he had come aboard sort of as a stranger to fill in. The inexperienced man was regularly assigned to that vessel, it was his vessel, but, on the other hand, he was just returning from a month or two vacation. So the experienced man thought that the regular man was the superior and the inexperienced man returning from vacation finding the other man, who was an old-timer, on board, at least an old-timer in terms of the Hudson, assumed that he was the captain.

THE WITNESS: Your Honor, it might be my nature, but I would not allow a setup like that. I can't perceive myself answering questions in that regard because I would never allow myself to be in that position. I would know before we got anywhere who is on first.

MR. LOSQUADRO: Your Honor, I am confused by the questions coming from all corners and the captain trying his best to respond, but do I understand him to say that if you were in the position of one of the men on the boat, that confusion should not have occurred, irrespective of the office?

THE COURT: That's what I understand him to be saying. If he were the experienced navigator, he wouldn't go aboard without finding out whether he was captain or mate. If he were the inexperienced navigator, he wouldn't go up the river without telling the experienced one that he had never been there before. Am I correct?

THE WITNESS: That's correct.

BY MR. BESHLIAN:

Q Whose job is it, Captain --

MR. LOSQUADRO: Excuse me. We are using the word "inexperienced."

THE COURT: As using it here, we are talking about having been along this route before.

MR. LOSQUADRO: Local familiarity, yes.

THE COURT: Yes.

BY MR. BESHLIAN:

Q Who designates the person to be classified as captain?

A There is usually somebody in the company who is manager of operations, personnel man, chief dispatcher.

Q It is a managerial function?

A Yes.

MR. LOSQUADRO: Objection. Leading.

THE COURT: Sustained. The decision having been made, how does a dispatcher normally communicate the decision?

THE WITNESS: Putting myself in that same position as a dispatcher, and I have a boat going up the Hudson River with, let's call him, a green man and an experienced man --

THE COURT: Yes, he can. Continue.

BY MR. PESHLIAN:

Q You stated that if you were a dispatcher you would give certain information to the party that was on the boat. Is that a custom generally followed in the industry?

A It was when I was active in the tug boat business, yes.

Q In your contacts with the business today, would you think it was still carried out?

A I know that it is in some cases because my brother is a tug boat captain and people I associate with are tug boat captains, and I know from their conversations with me and telephone calls I have taken for my brother, that when an assignment is made, sometimes it doesn't matter what tug you are assigned to, it is just the job you are assigned to. I do know that in the case of my brother, it was in my house and he was assigned to go from his own boat to another boat because the tug was going to Baltimore and he was more familiar with Baltimore than was the man who was on there.

Q Let me ask you this, Captain Stillwaggon: there seems to be some problem because the man with the local experience was on the boat for one day prior to the non-local experienced operator arriving. Does the dispatcher when he is assigning a job review the crew that's on the boat?

A I don't know how those people are working in that particular office at that particular time, but I do know that in my own experience, before you assign a tug to a job, you assure yourself that, (a), the tug can do the job; (b), the men who are on the tug can do it, the actual work; and, (c), that they do know the area.

Q These are the considerations given when assigning a tug to a job?

A Those are the ones that I would use, yes.

Q Are they considerations that are generally used throughout the industry?

A As far as I know, yes.

Q So we will suppose that a dispatcher called in or dispatched the tug to Bayonne from Bushey shipyard in Brooklyn at sometime in the afternoon of February 2, 1974, he would have given these things considerations in first locating the tug and then dispatching it to the Ocean Prince, is that correct?

A I should think that if it were me, that's what I would do.

Q Do you think these are standards that most of the industry follows?

A As far as I know, yes.

MR. BESHLIAN: I don't think I have any other questio

THE COURT: Cross examination.

CROSS EXAMINATION

BY MR. LOSQUADRO:

Q When you go up the river, Captain, do you see the shoreline with your experience or with your eye? Do you see it with your experience or do you see it with your eye?

A I really don't understand.

Q I said when you go up the river, do you see the shoreline with your experience or do you see it with your eyes?

A On a day when I can see, I can see it with my eye. On a day when my eye can't see it, I use my experience with the radar or something like that.

Q Under those circumstances, you would use your other navigational aids such as the radar and your chart?

A Right.

THE COURT: If you are not experienced with the topography in the Hudson, how much value is the radar when there are severe ice buildups along the shore giving you a false shoreline and ice in the river concealing the buoy?

THE WITNESS: Actually, your Honor, I don't think that the ice buildup would take away from the shoreline, the topographical picture that you get, because the ice buildup would be included within the sea clutter that's on the scope.

But the shoreline itself would show. I don't think that the buildup of ice, which could only be a foot, maximum, of one piece of ice coming on top of the other, I don't think that that would take away from the view that you have on the radar screen.

THE COURT· That's true there because the banks are fairly steep and you know the banks are fairly steep. But if you didn't know the banks were steep and if there were a gradual bank with ice along it, you might have the mistaken impression you were quite close to the bank when, in fact, all you were close to was the ice buildup.

THE WITNESS: That's true, coming off a beach, or something like that, you mean.

THE COURT: Yes.

THE WITNESS: Yes.

THE COURT: They have also spoken about a problem in that area because of the sharp cliffs of getting double radar bounces back off the opposite side confusing the radar picture. Have you ever experienced that?

THE WITNESS: No, sir.

MR. LOSQUADRO: Your Honor, I think we can only speculate on what a given radar set will react -- how it will react to what it is seeing at any given time.

THE COURT: That's quite true. I think also to a degree the height of the radar antenna has an influence on this, and the direction of the radar. We have all experienced double bounces in various types of electronic things, such as television reception, and so on. It is a function of the equipment used, the location of the signal, the atmospheric conditions as well as obstructions.

MR. SCHULMEISTERS: And, your Honor, adjustment.

THE COURT: Adjustment, that's true, too.

BY MR. LOSQUADRO:

Q Did I understand your testimony that in your opinion, among the duties of the men in charge of the operation of the boat, the two men assigned, to have a clear understanding of their responsibilities among themselves?

A Yes.

Q You said you wouldn't let yourself get into that position and your answer was yes?

A Yes.

Q Do you know Captain Kiernan?

A By sight, yes.

Q Do you know him by reputation?

A I know of him. I know of his family. I don't know him very well.

Q Do you know if his experience is extensive on the Hudson River?

A I would rather say that I have heard of him for many years while I was working on the river. I know that he was on the river.

Q An old-timer?

A Yes.

Q Back in the old days of the steam tugs, were they also not, I don't know what you would call it, bell boats?

A Bell boats, yes.

Q Where you would have **an engineer responding to a** gle **jingle from the pilot house?**

A Yes.

Q Those were slow reacting vessels, weren't they?

A To some degree, yes.

Q Today we have direct pilot house throttles, is that correct?

A Yes.

Q Tugs are bigger, more powerful?

A Yes.

Q More maneuverable?

A Yes.

Q Better reacting?

A To some degree, yes.

THE COURT: Let's keep in mind that this particular tug was built in 1958, so it is not exactly a youngster.

MR. LOSQUADRO: It is not a youngster.

THE WITNESS: I do know the boat.

Q After you gain a level of experience and competence handling boats, depending upon what your particular trade is, piloting big ships or handling tugs and barges, each of which has its own specialty, so to speak -- would you agree?

A Yes.

Q After that and after your boat handling has been tested, you must go to places you haven't been before, isn't that so?

A That's right.

Q If you were satisfied with the level of performance you perceived over a period of time of a man, would you consider it appropriate to send him to places as long as you gave him a man familiar with local conditions, like Kiernan?

A Yes.

Q Would you say that's a prudent thing to do?

A Yes, with the understanding that they were working as a team and that there was no confusion about who was on first.

Q If you had good men, you would expect as one of their duties to understand the chain of command themselves? You have already said that that was one of their duties?

A I would expect that.

Q The barge New London, is that a particularly large barge as far as tank barges go or is it particularly small?

A It depends. This is all relevant. I have handled barges, 235,000 barrel barges, 35,000 tons. I think the New London was the old Marine Valentine II, and I pushed her in the canal in the 1950's when she was a 20,000 barrel barge. I think then either she's bigger or -- compared to the big barges that are around in New York, she is probably one of the average size barges.

Q Would you have an estimate on how big you think she is today or how big she was in 1974? I think you are suggesting that it might have been elongated.

A It might have been. I don't know that. I don't know that I have seen it since I worked with it years ago. I might have seen it.

Q Did you ever hear of the Cibro New York?

A Yes.

Q What is it and how big is she in length?

A She is about 125,000 barrel barge, isn't she, something like that, 200,000? She's probably 450 feet long and she probably has about a 30 foot side on her, something like that.

Whiteley.

JOHN FREDRICK WHITELEY, called as a witness by the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SCHULMEISTERS:

Q What is your occupation?

A I am a lieutenant in the United States Coast Guard.

Q Where are you stationed now?

A Presently stationed at Marine Safety office, San Juan, Puerto Rico.

Q Were you at one time stationed in New York?

A Yes, I was.

MR. SCHULMEISTERS: I am handing to the witness the Ocean Prince's investigation files, Exhibits 23, 23A, 23B have been taken out of this file and previously marked.

Q Mr Whitely, were you in New York in 1974?

A Yes, I was.

Q What office were you assigned to?

A I was at the Marine Inspection Office, Battery Park.

Q Would you please take a look at Exhibit 23 and tell me if you had anything to do in connection with its preparation?

A Yes, I did.

MR. SCHULMEISTERS: Your Honor, I would now also like to mark as exhibits the 2692 forms. I had premarked them as government exhibits. Now we can change them to FF 1 for the 2692 form on the Ocean Prince and --

THE COURT: Why call it 1 if you are not adding something to it?

MR. SCHULMEISTERS: FF will be the 2692 form on the Ocean Prince and GG on the barge New London. Any objection?

MR. KIMBALL: I'd like to have someone identify it and I'd like to look at them.

(Government's Exhibits FF and GG were marked for identification.)

xxx

Q Lieutenant, let me ask you. What is a 2692 form?

A 2692 is a report of vessel casualty or accident.

Q Are there 2692 forms in that Ocean Prince file?

A There are photostats of 2692 forms in here.

THE COURT: Is it a form regularly used by the Coast Guard as an official form?

THE WITNESS: Yes, sir, it is.

THE COURT: Do you gentlemen wish voir dire of this witness concerning the forms?

MR. KIMBALL: I don't think so, your Honor.

MR. BESHLIAN: I don't think it is necessary, your

Honor.

MR. LOSQUADRO: I do on this document here, your Honor, the New London.

THE COURT: Go ahead.

VOIR DIRE EXAMINATION

BY MR. LOSQUADRO:

Q Lieutenant, was this document which has been marked GG for identification submitted to you by someone on behalf of New London?

A This particular document, I would say no, it is a photostat. The original was submitted to our office, not to me personally.

Q Do you know when it was submitted?

A There is a stamp on it that I recognize as a stamp used in the investigating section that says January 10, 1974.

Q January, '74?

A Yes.

Q In the upper right-hand corner it says "Date submitted June 10, 1974." January preceded --

THE COURT: June, not January?

THE WITNESS: It could be June. The stamp is not that legible.

THE COURT: Since the occurrence didn't occur until ones that would have dealt with your conclusion in paragraph two?

A There is 3 February, 1974; 5 February, 1974; another 5 February, 1974; 11 February, 1974.

Q Do they refer to ice?

A Yes, they all do.

Q With respect to the visibility that existed at that time, did you do any independent checking other than what you received in the 2692 form and what you received from talking to Mr. Reimer?

A Not that I can remember.

Q Would you please look at the 2692 form submitted by Red Star?

THE COURT: It says half mile visibility.

MR. SCHULMEISTERS: That's what I was going to ask him, to read from the record what the visibility is reported there.

Q Read from the exhibit.

A The Ocean Prince?

Q Right.

A Under "22 (b), visibility, poor (1/2 mile)."

Q Suppose you had been advised that the visibility was two miles, would you have done anything different?

A I probably would have, yes.

Q Such as?

MR. LOSQUADRO: I object to this, your Honor. I think we are asking the witness to speculate.

THE COURT: I think the fact that he wouldn't necessarily have reached the same conclusion had he known there was two miles visibility is the appropriate answer.

MR. LOSQUADRO: I think he is leading into an area where he is asking a party in interest to make another judgment on somebody making claim against him in a litigation.

THE COURT: Let's get a little closer to the subject by asking the witness, in your discussion with Mate Reimer, do you recall what he described to you as being the weather conditions?

THE WITNESS: My recollection of the telephone call is very, very vague. I remember that he said that the weather was just poor visibility, he couldn't see anything.

THE COURT: Do you know if Mr. Kunkel personally interviewed Mate Reimer?

THE WITNESS: I don't know.

MR. LOSQUADRO: Your Honor, I think we might be getting some very bad information onto the record.

THE COURT: We are getting non information right now. What's the next question?

Q If you had been advised that the visibility was two miles, would you have done anything different in preparing your report or in carrying out your investigation than what you did do?

A Yes, I would.

Q What would you have done?

A I doubt that I would have found the proximate cause of the casualty to be the same as I did regarding poor visibility because there are other available aids to navigation in the area that could have been seen with two mile visibility that would have been difficult to see in half mile visibility.

MR. SCHULMEISTERS: Thank you very much. I have no further questions.

MR. KIMBALL: We renew our objection.

THE COURT: You are a little late, but --

MR. LOSQUADRO: The objection has been made, your Honor.

THE COURT: I don't take it as being an affirmative statement. I will allow it to the extent that it draws away from the authority of the report he submitted. I will not allow it affirmatively as being a conclusion as to responsibility, because the witness lacked adequate knowledge of all the circumstances to form a conclusion.

MR. SCHULMEISTERS: One point in that connection, your Honor, is that this misleading information of a half mile visibility was submitted by Red Star.

THE COURT: That you have already made the point of.

CROSS EXAMINATION

BY MR. KIMBALL:

Q Mr. Whiteley, how long had you been in the Marine Inspection office prior to your investigation of the Ocean Prince casualty?

A Approximately two and a half years.

Q Have you investigated other casualties prior to your investigation of the Ocean Prince incident?

A Yes, prior to my investigation of it.

Q What is the usual practice that was followed in 1974 by you in investigating marine casualties?

THE COURT: Let's confine that to marine casualties not involving personal injury.

MR. KIMBALL: That's fair.

THE COURT: Or loss of life.

A I would attempt to interview as many witnesses as possible, depending on what their testimony was and what I could observe myself, gather any other information that would help me in reaching a determination, and reach the determination, whatever it might be.

Prince
SA
77
e Goettel
iv. 3358
iv. 5801

AFTERNOON SESSION

2:30 p.m.

THE COURT: Call your next witness.

MR. SCHULMEISTERS: Your Honor, on Exhibit 23B, right now it stands for identification.

THE COURT: Everybody agreed it will be admitted, subject to the fact it is a self-serving document, the information therein having been provided by Mate Reimer.

MR. LOSQUADRO: Are you referring to the 2692 form?

THE COURT: No.

xxx (Plaintiff's Exhibit 23 received in evidence.)

MR. SCHULMEISTERS: I call Mr. Kerns.

GERALD D. KERNS, called as a witness by the Defendant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SCHULMEISTERS:

Q What is your occupation?

A Commanding officer of the Coast Guard cutter Manitou.

Q What kind of a vessel is the Manitou?

A 110 foot coastal tug or harbor tug, I should say.

Q How long have you served on this tug?

A Since September, 1973.

Q Between September, 1973 and the present time, have you had occasion to go up and down the Hudson River in that tug?

A Yes, I have.

Q Have you been going up and down the Hudson River during ice?

A Yes, I have.

Q Do you recall were you up the Hudson River this past winter?

A Yes.

Q Was the ice heavy then?

A Yes, the heaviest it has been in quite a few years.

Q During such ice, did you traverse the area from Bear Mountain Bridge to Con Hook?

A Yes, I did.

Q Did you have occasion to use your radar?

A Yes. Everytime we get underway we use our radar.

Q Would you consider them heavy ice conditions?

A Yes.

Q During heavy ice conditions, did you have occasion to observe whether or not your radar would show the shoreline?

A Yes.

Q Did it show it?

A Yes.

Q Did it show it clearly?

A Yes.

Q Did it show Con Hook Island?

A Yes.

Q Did it show Bear Mountain Bridge?

A Yes.

Q Have you had occasion to go in the direction from the Bear Mountain Bridge towards Con Hook Island and observe the Con Hook Light?

A Yes, I have.

Q How far away from the Con Hook Island have you observed the Con Hook Light?

A Approximately the town of Manitou which is about a mile and a half south from Con Hook Light. It is on the east side of the Hudson River.

MR. LOSQUADRO: Your Honor, can we get the weather visibility?

THE COURT: First let me get my chart back.

MR. LOSQUADRO: I would like to know the date as well, the date on which he is making these observations.

THE COURT: He is making a generalized observation from several trips, I take it.

A more important aspect yet that you haven't asked about is the height of his cabin or eye or bridge and also which side of the channel he is on at that point.

Q What is the height of eye on the Manitou?

A Approximately 21 feet.

Q Would you please put a mark on the chart from where you can see Con Hook Light as you are approaching northward having come through Bear Mountain Bridge, approximately at the town of Manitou.

Q Make a circle showing approximately the area.

A Right in here.

Q You have drawn a circle and a smaller circle in the middle of it.

THE COURT: My observation of that point from here is that it appears to be on the easterly side of the river, slightly to the easterly side.

THE WITNESS: We favor the east side because of the rock up here.

Q Also, it is just slightly above Fort Montgomery.

MR. BESHLIAN: Is there a foot marker that you can refer to where the circle is made?

THE COURT: He has marked it just below the latitude 20 minute line and just outside of the 30 foot depth marked.

MR. SCHULMEISTERS: I have put the letter "I".

MR. SCHULMEISTERS: That is all I have.

THE COURT: Cross.

CROSS EXAMINATION

BY MR. LOSQUADRO:

Q Mr. Kerns, have you ever picked up ice returns on your radar?

A Yes.

Q Can you tell me how it appears on your screen?

A Like a cloud.

Q Did you ever compare the picture of ice return on your radar screen with the appearance of it in the river when you passed by it?

A Yes.

Q What height above the water would that ice be rafted for your radar screen to pick it up?

A It depends on the weather conditions.

Q When you observed it.

A When I observed it. It has been on numerous weather. Icy weather.

Q I would like you to answer the question.

A During the ice season you pick up like small targets. If you look at it, it is fuzzy around the edge. When you look at the land, it is sharp and defined --

Q You missed my question.

When you pick up ice return on your radar screen, you described what it looked like, then I asked you have you ever had occasion to observe that particular accumulation of ice as you passed it that you were picking up on your radar screen.

A Yes.

Q At what height above water would that accumulation of ice have to extend for your radar screen to pick it up when it picked it up?

A Again, the same type of condition. It could be water level.

Q It could be at water level?

A Yes.

Q Does ice accumulate along the shorelines on the Hudson River?

A In areas, yes.

Q Do you notice it accumulating in bends and curves and eddies?

A Yes.

Q When it does that, does it accumulate?

A Yes.

Q Does ice raft along those places? Do you know what I mean by raft?

A Yes, it does.

Q Would that send a sharper signal back on your radar screen than free ice in the middle of the river?

A Yes.

Q Than surface level ice?

A Yes.

Q If the shoreline was coated with accumulated ice, might that not appear as shoreline?

A On occasions it might.

Q If it was particularly heavy in a curve or bend, might it be very difficult to distinguish it from shoreline?

A Yes, in some areas it could be.

Q What type of radar set are we talking about?

A Experimental Mark 74 radar, one of two in the Coast Guard.

Q Is it a sophisticated piece of equipment?

A For its type, yes, it is.

Q Have you ever used radar equipment on board commercial tugs?

A I have used similar type radars, yes.

THE COURT: Have you ever used a Decca?

THE WITNESS: No.

THE COURT: This was a Decca, wasn't it?

MR. KIMBALL: Yes, sir.

THE COURT: Speaking of areas where ice accumulates, look at your chart north of Mystery Point. There is a depth reading of one foot. Do you see that?

THE WITNESS: Yes, sir.

THE COURT: Is that an area where your experience has indicated that ice accumulates on an ebb tide?

THE WITNESS: It could accumulate there, yes. We are talking about the large chunks or small chunks or just ice in general?

THE COURT: Both. Ice in general.

THE WITNESS: You might get maybe a foot, less than a foot of ice in that area.

THE COURT: How far out might it extend? In other words, might it fill in that entire shallow area so that by sight of ice, someone unfamiliar with Mystery Point would not be aware that he had passed Mystery Point?

THE WITNESS: By radar.

THE COURT: Forget radar. Visually with a searchlight on a dark night.

THE WITNESS: I believe he could spot this.

THE COURT: Spot what?

THE WITNESS: The projection out here, the tip of the land off of Mystery Point.

THE COURT: It is high enough that the ice wouldn't appear to be the same thing?

THE WITNESS: No. That one foot is just along the shoreline there.

Q Would you say that radar equipment on board the Manitou is sophisticated compared with radar sets generally?

A Not per se as sophisticated -- not more sophisticated than a tug radar.

Q But you have never us[illegible]cca?

A No.

Q What does the Manitou do on the Hudson River?

A Ice breaking.

Q Does it do that every winter?

A Not every winter.

Q Did it do it in the winter of '73, '74?

A No.

Q Those prior winters, do you know of other Coast Guard vessels that regularly ice broke?

A Yes.

MR. SCHULMEISTERS: He is making him his own witness now.

THE COURT· What is the last question.

(Record read)

THE COURT: It is all right.

Q Is there any provision in the Coast Guard manual providing that Coast Guard vessels transiting areas should take note of aids to navigation and report them to Aids of Navigation Section when they suspect they might be off station or not?

A Yes, there is.

THE COURT: That was my question.

Q Do you do that regularly, sir?

A If I sighted a discrepancy, yes, I report it and I check to see, not all the time, but check to see that the lights are watching properly and the buoys are on station.

Q And you do this regularly and if you find something, you report it?

A Yes.

Q Do you assume that the predecessor boats on the Hudson River breaking ice do the same thing?

MR. SCHULMEISTERS: Objection.

THE COURT: Sustained.

It is a Coast Guard function regardless of assignment to immediately report any discrepancies in aid to navigation?

THE WITNESS: Yes, it is.

Q Have you ever made any observations at the 25 buoy that she was not watching properly, she was under the ice in the ice season when the can is in use?

A I make it a point when I go by this area to check for this buoy because it has connotation for the Coast Guard, they call it Coast Guard Rock.

THE COURT: It is also known as Sauk Rock after the U.S.C.G.C. Sauk?

THE WITNESS: Yes. It depends who you are talking to, or Sassafrass Rock.

Q Have you ever noticed that buoy not watching properly, and by that I mean off station or under the ice or partially covered by it?

MR. SCHULMEISTERS: This is during ice season?

THE COURT: Yes.

A I have never seen it submerged. Everytime I have sighted it, it appeared to be on station and watching properly.

Q Did you ever suspect it was not?

THE COURT: What do you mean by that question?

MR. LOSQUADRO: Did he ever suspect having observed it on any of these occasions that it might not have been on station.

THE COURT: Are you asking him on some occasion by sight of eye, it appeared off station?

MR. LOSQUADRO: Yes, or by radar.

MR. SCHULMEISTERS: He has just answered.

THE COURT: Do you know how they determine position testified as follows:

DIRECT EXAMINATION

BY MR. SCHULMEISTERS:

Q Mr. Warman --

MR. SCHULMEISTERS: Your Honor, some of this will overlap with the damages but in connection with the assessment of the penalty, I also propose to show the gravity of the spill.

THE COURT: All right, but let's not get into too much detail of the costs of cleaning it up.

Q Mr. Warman, what is your occupation?

A I am an officer in the United States Coast Guard and work in the Marine Environmental Protection Division.

Q Were you in the Coast Guard in February, 1974?

A Yes.

Q What was your rank or rating then?

A I was a gunner's mate second class at that time.

Q Did there come a time when you were concerned with the Hudson River, in February, 1974?

A Yes, there was.

Q Please explain to the Court how this came about.

A I had duty on the weekend or Sunday, February 3rd, and the junior officer of the day assigned me to go up to the Bear Mountain State Park to investigate a spill thathad been reported to him above Gouverneur's Island and proceed to Bear Mountain State Park.

Q Did you go by yourself?

A No.

Q Who went with you?

A Radarman Third Class Joseph Wallig.

Q Where is he now?

A I was told that he is in Seattle.

Q How did you proceed?

A Physically?

Q Physically.

A I left the Island in a government vehicle and drove up.

Q Where did you drive to?

A We were driving up the Palisades Parkway and finally we could see the lights of the tug and barge as we were going down -- I can't remember the route number exactly. The parkway ended there and we were on a New York route.

Q Which tug and which barge?

A All four. The tank barge New London was there, the 22 and boat tugs were there at the time I arrived.

Q Which two tugs?

A The Ocean Prince and a Moran tug. I can't remember the name.

Q Did you observe any oil coming from any of the barges?

A I didn't actually observe it coming from the barge but there was a pool of oil around the tank barge New London.

Q Once you arrived, did you go on board the tug or the barge?

A Yes, sir. I boarded both the tug and the barge.

Q Did you talk to anyone on the tug?

A Yes, sir.

Q Who did you talk to?

A I don't know their names but I talked to two gentlemen in the pilothouse at the time.

Q Did you make any mention to any of these gentlemen about any prior incidents?

A No.

Q Did you at that time know of any prior incidents?

A No, I did not.

Q In connection with your activities there, did you take photographs?

A Yes, sir, we did.

Q Did anyone else take photographs over there?

A The Palisades Interstate Park Commission policeman took some photographs.

Q Did any other Coast Guard man take photographs?

Q How long did the first company work on the clean-up operation?

THE COURT: Mr. Kimball, I get the impression you are doing a little discovery on the damages here.

MR. KIMBALL: We will never see this man again.

THE COURT: He doesn't know much about it, either, so why don't you wait.

MR. KIMBALL: No further questions.

CROSS EXAMINATION

BY MR. BESHLIAN:

Q You said you arrived on the scene about eight o'clock in the morning or thereabouts?

A Yes, sir, it was early.

Q When you arrived on the scene, the tug Ocean Prince and barge New London was already made fast to the dock?

A Yes.

Q It was at this time that you estimated about a thousand gallons of oil in the water?

A From what was visible to me, yes, sir.

Q Was there anything that restricted your visibility?

A Ice.

Q Can you see any oil under the ice?

A No.

Q You said you had a conversation with the two men in the pilothouse?

A Yes.

Q What was the nature of the conversation?

A I requested to see the tug's paper and log books.

Q Did you examine them?

A Yes, sir, I did.

Q Did you make any notations or any records for your office with respect to the papers that you examined?

A Yes, sir. Included in my statement is some information I extracted from the log book.

Q Is that included in Exhibit MM?

A Yes, sir, it is.

Q Did you discuss the cause of the incident with the individuals in the pilothouse?

A To the best of my recollection, we discussed it, yes, sir.

Q Do you remember what was said?

A Very little, other than the fact they ran aground and I took the information from the log as to the time and currents.

Q Was there any conversation with respect to the reason for running aground?

A To the best of my knowledge, no, sir.

Q Was that the full extent of the conversation with

THE COURT: Why don't we take a brief recess at this point to all cool off.

(Recess)

MR. SCHULMEISTERS: Government calls Melvin W. Hallock.

MELVIN W. HALLOCK, called as a witness by the Government, being first duly sworn, testified as follows:

Q Captain Hallock, what is your occupation?

A U.S. Coast Guard.

Q What are your present duties?

A Presently the Chief of the Aids to Navigation Branch, Third Coast Guard District.

Q When did you join the Coast Guard?

A I joined the Coast Guard in 1974.

Q What capacity?

A At the Coast Guard Academy.

Q When did you graduate from the Academy?

A 1952.

Q What was your assignment after that?

A Coast Guard cutter Barataria.

Q What type of vessel is that?

A Today it is what we call a high endurance cutter but at that time it was a seaplane tender.

Q What were your duties on that vessel?

A I was the weapons officer and later student engineer. During the time I was weapons officer, of course, deck watch stand.

Q Did you qualify as an O.D.?

A Yes.

Q After the Barataria, what did you do?

A Coast Guard Loran Station, French Frigate Shoals.

Q What was your next assignment?

A The Coast Guard base, Alameda, California.

Q What did you do there?

A A variety of duties. Security, first lieutenant, operations.

Q After that what did you do?

A Coast Guard cutter Sassafrass.

Q For how long a period?

A Two and a half years.

Q What were your duties on the Sassafrass?

A Executive order.

THE COURT: What year were you on the Sassafrass?

THE WITNESS: 1959 to 1961.

THE COURT: You got off before she hit the rock.

Q Briefly, what are the duties of an executive officer?

A He is responsible for the administration of the policies on the ship and on the Sassafrass when I was on board, I was responsible for the training of the junior officers in regards to ship handling and buoy tending.

Q Did this include navigation?

A Yes, sir.

Q Did this include use of radar?

A Yes.

Q After that, after your time on Sassafrass, where did you go?

A The Coast Guard Institute at Groton, Connecticut.

Q Doing what?

A I was in charge of the correspondence course preparation.

Q After your tour at Groton?

A Commanding officer of the Coast Guard cutter Hornbeam in Woods Hole, Massachusetts.

Q How big a vessel is that?

A That is 180 foot buoy tender, same class as the Sassafrass.

Q As commanding officer, did you have occasion to navigate the ship?

A Yes. Well, more responsible for the supervision of it, yes.

Q Did you have occasion to work the radar of the ship?

A Yes.

Q Incidentally, what areas did the Sassafrass and Hornbeam operate?

A The Sassafrass operates off the Delaware Coast in Delaware Bay, Delaware River and off the New Jersey Coast.

THE COURT: Was the Sassafrass ever based in Cape May?

THE WITNESS: Yes.

THE COURT: What years?

THE WITNESS: It would have been at least since World War II up until last week.

THE COURT: For the record, I think I should tell you I believe I spent a two-week tour on the Sassafrass as a reserve officer back in the sixties. It wasn't during the winter and it wasn't in the Hudson. I do know I spent two years on a sister ship of the Sassafrass but that was in tropical and western waters.

Q During your tour of the Hornbeam, where did she operate?

A From Massachusetts Bay seaward, Nantucket Sound, south of Nantucket Island, Buzzard's Bay and Vinyard Sound and Rhode Island Sound over to Block Island.

Q Did you have occasion to navigate through ice?

A Yes.

Q Did you have occasion to navigate through the Cape Cod Canal?

A Yes.

Q When it had ice?

A Yes.

Q What was your next duty after the Horn Beam?

A It was in Quantanamo, Cuba.

Q What duties were included there?

A I rode the ships for evaluation purposes, usually as the senior rider.

Q What kind of evaluation?

A This would be all phases of operational evaluation.

Q Any kind of specific evaluation in connection with radar?

A Yes.

Q Would you explain to us, please?

A We had a standard exercise which every ship ran every day called the low visibility exercise where they ran at Quantanamo River or the lower bay under simulated low visibility conditions. During this time we allowed the navigator to take visual fixes but he could not provide any information back to combat and during this exercise, we then compared the radar fixes to the visual fixes and, of course, set a standard of accuracy so we would be able to evaluate relating it to some type of numerical score.

We also ran a swept channel exercise where we did allow visual fixes to be used but we required the combat to navigate the vessel also.

MR. KIMBALL: I haven't objected but I really don't see the relevance of it.

THE COURT: I think he is attempting to establish the witness' expertise in the ability to navigate by radar with limited visibility.

MR. SCHULMEISTERS: Yes, that is the direction I am going.

Q After the tour of duty at Quantanamo, where did you go?

A The training center, Gouverneur's Island, New York.

Q What were your duties there?

A I was the training officer for most of the tour and executive officer the last part.

Q What was your next tour of duty?

A Coast Guard cutter Hamilton in Boston.

Q What was your position there?

A Commanding officer.

Q What kind of vessel is that?

A She is the newest A.T.C. that we have, 378 feet, 3,000 tons.

Q Did you have occasion to navigate through ice with her?

A Only proceeding to an ocean situation and wanting to expose the younger officers to ice, went into the ice field off of Labrador.

Q How about the C & D Canal?

A No.

Q What was your next tour of duty?

A My present tour, Chief of Aids to Navigation.

Q Getting back to radar, when you were going through the Cape Cod Canal on the Hornbeam, did you have occasion to navigate through the ice in restricted visibility?

A Yes.

Q Approximately, roughly speaking, how big is the C & D Canal?

A I am sorry. I transited the Cape Cod Canal.

Q The Cape Cod Canal. I am sorry.

A To the best of my memory, 250 to 300 yards.

Q Could you proceed through that by use of radar in restricted visibility?

A Yes.

Q Including ice conditions?

A Yes.

Q Can you tell us, please, what considerations one should make when using marine radar?

MR. KIMBALL: Where is the vessel located, under what circumstances?

Q First of all, generally.

MR. KIMBALL: Is it possible to give a general answer like that?

THE COURT: I suppose it is.

You are asking how radar is operated or what aspect of radar are you talking about?

MR. SCHULMEISTERS: Let me be more specific.

Q Would you please look at one of the charts we have here of the Hudson River.

MR. SCHULMEISTERS: I have put in front of the witness Exhibit DD.

Q When proceeding through a river like the Hudson River, and why don't you take it anywheres from an area down at the bottom of the chart, say Haverstraw Bay, what considerations would one make when using radar?

A If you are going to transit the river, one of the first things we find you would have to do is basically tune the radar and by tuning, I am speaking of the sensitivity and the resolution that you would obtain with your radar.

Knowing that you are going into an area that is relatively narrow, your radar would have to be well tuned so it did not become landlogged. By landlogged I am speaking of where detuned radar would give you the effect of literally closing the river or land entirely ahead of you.

Q Would a same appearance show to you if you were, let's say, in an area down in Haverstraw Bay, if you did not have your radar properly tuned?

MR. KIMBALL: Your Honor, am still not sure where this is leading.

THE COURT: I am not either.

MR. SCHULMEISTERS: We will get there in one moment.

A Are you speaking in relation to the chart in front of me, the difference between Haverstraw?

Q Would there be a difference in your opinion how radar would react if you were doing it down at Haverstraw as opposed to the area of the Bear Mountain Bridge?

A The radar would have to be well tuned at Bear Mountain Bridge because you have high land and a relatively narrow river.

Q Is there anything on this chart or this stretch of the river passing from Haverstraw Bay up to the Bear Mountain Bridge that might affect your radar, and I refer you to the towers here just south of Thompkin's Cove.

MR. KIMBALL: He is leading the witness.

THE COURT: He is and I can't imagine what importance it is, but why can't you get us there a little faster.

A We have two things on this particular portion of the chart. You have an overhead power cable and, of course, the fixed bridge at Bear Mountain.

Q Would you please take this line and draw an arrow labeled with the letter J, the power cable?

THE COURT: Why are we concerned with this? It is apparent you will get a solid bounce off that bridge, but the vessel passed the bridge and was heading north at the point we are concerned with.

MR. SCHULMEISTERS: I would rather have the witness explain.

Q What would be the effect of passing under the power cable, sir?

A The immediate effect would be a temporary detuning of your radar. In other words, after you have passed underneath that power cable, it will saturate the scope and for a certain time period after that you would not get an accurate picture.

THE COURT: Show me where that power cable is, Captain.

THE WITNESS: It shows a power cable running from this tower to this tower.

THE COURT: How long thereafter will it have an effect on the radar's operation?

THE WITNESS: It depends on the radar itself. On the older radar, it would last [illegible] minutes. The newer ones are built in to eliminate that detuning.

THE COURT: We are talking about hours rather than minutes.

Q If you are navigating through that area and as you are approaching the area of the Bear Mountain Bridge, I believe you mentioned earlier there would have to be some tuning of the radar. Would you explain what you mean by that?

A On the older radar, this could actually change the electronic characteristic on the scope and after you have saturated the scope like that, you would have to tune the radar again.

Q Where in this area would it saturate the scope?

A As he passed the bridge.

Q You say you would have to tune it again?

A Yes.

Q What happens if you do not tune it?

A You will not get accurate range readings and in case of some objects, you might miss the object entirely.

Q Have you had the expression of pulsating of radar if you are passing between high cliffs? There has been some testimony to that effect.

A No.

Q There has been some testimony that the radar set would show movement back and forth of the shoreline --

MR. LOSQUADRO: I don't know that that is what we have heard. My understanding of the prior testimony is that in mountainous areas, you get a strong return of the mountains on your radar screen.

THE COURT: Someone else testified in addition you sometimes got a rebound effect where your return, if your peaks were high enough on both sides, could bounce again back off the opposite shore and you would be getting a return from the opposite shore.

MR. LOSQUADRO: That is not the way I interpreted it.

THE COURT: That was the way I interpreted it but another witness said it wouldn't happen.

MR. SCHULMEISTERS: I interpreted it that way and that is why I am asking the captain.

Q Do you think you will get something like this with an improperly tuned radar?

A No.

THE COURT: With improperly tuned radar with high images on both sides, could you get a double image?

THE WITNESS: Yes.

Q With a properly tuned radar, the standard marine radar, what would be the accuracy --

MR. KIMBALL: Objection. What is standard marine radar?

THE COURT: In this instance we are dealing with Decca radar. Are you familiar with it?

THE WITNESS: Not intimately.

THE COURT: Have you ever seen it?

THE WITNESS: Yes.

THE COURT: Have you ever used it?

THE WITNESS: No.

MR. KIMBALL: Have you ever used it on the Hudson River?

THE WITNESS: No.

THE COURT: Do you think the operation of the Decca radar operates differently than most of the radars you are familiar with?

THE WITNESS: No, sir.

MR. LOSQUADRO: I don't know what the basis of that assumption is, by the way.

THE COURT: He used it a couple of times and didn't see any difference between it and the radar the Coast Guard uses.

Is Decca an English make?

MR. LOSQUADRO: I don't know.

MR. FESHLIAN: If it follows the navigational system, it is.

THE COURT: I assume it is, unless it is made by the record company.

MR. SCHULMEISTERS: I may be wrong but I thought the radar was made here in the States.

THE COURT: It could be.

Q Captain, with what kind of accuracy could you use a properly tuned radar in the area of Bear Mountain Bridge going up to Con Hook Island?

MR. KIMBALL: Objection. Under what circumstances?

THE COURT: The circumstances that we have here. Night visibility of between a half mile and two miles depending upon who you believe. Light snow or snow flurries depending on who you listen to. Heavy ice on the river.

MR. KIMBALL: We would submit if the witness has never used radar on the Hudson River he is not competent to answer the question.

THE WITNESS: I have not used it on the Hudson River.

Q Have you used it in areas where there is ice on the river?

A Yes.

Q Have you used it in a narrow channel with ice?

A Yes.

Q Have you used it in areas where there are mountains on both sides?

A Yes.

THE COURT: And at night with limited visibility?

THE WITNESS: Yes.

MR. KIMBALL: I still object.

THE COURT: Some other expert gave us an opinion on this. I forget what his exact figure was but he gave us an estimate. In fact, I think it was your expert.

MR. SCHULMEISTERS: Mr. Kiernan gave an estimate, also.

MR. KIMBALL: Our expert had been up there, your Honor.

MR. SCHULMEISTERS: I don't think there is that much difference --

THE COURT: Let's get this over with.

Q Captain, with what kind of accuracy do you think radar could be used in such an area?

A You would have accuracy -- you would probably be have you had occasion to become familiar with other accidents that have occurred in this area?

A Yes.

Q Have you become familiar with the matters that are in this Exhibit 33?

A Yes.

Q Have you also become aware of the fact that the Sauk and the Sassafrass, two Coast Guard vessels, have encountered difficulties with that rock?

A Yes.

MR. KIMBALL: Objection. He is leading the witness.

THE COURT: It is on an unimportant area. Let's get this out of the way.

Q Considering the history with respect to the prior groundings, prior to '74, and I will mention to you the matter of the Sauk in '63, the Sassafrass in 1969, the Comanche in 1935 and a reference to a few unknown ones in the 1920's and then the Ocean Prince now in February, '74.

Would you please also consider your experience in Aids to Navigation and your tours of duty on the buoy tenders, the Sassafrass and the Hornbeam, and your experience as a navigator.

Would you please also look at the chart, and your position as Chief of Aids to Navigation.

Do you have an opinion whether or not the area here in the Hudson River is adequately marked?

MR. KIMBALL: Objection.

THE COURT: On what grounds?

MR. KIMBALL: He has asked about 15 questions I think at one time.

THE COURT: The ultimate question is the aid to navigation adequacy in the area. Everything else was put to him as being part of what he should assume.

MR. BESHLIAN: I don't think all the factors make any iota with respect to the question. The question should be is the aid to navigation suitable, and that would be sufficient.

Q My question is, is the area here marked with adequate aid to navigation.

MR. SCHULMEISTERS: And I drew his attention to all the other factors.

MR. BESHLIAN: I think they are not relevant.

THE COURT: The two of you are losing me completely. I don't know what you are saying to each other.

Q Captain, do you think the area there in the area of Con Hook Island, is adequately marked with aids to navigation?

A Yes, I do.

THE COURT: Is that your opinion today or is it an opinion expressed as the conditions existed prior to 1974?

MR. KIMBALL: It has to be first established whether he ever considered the question of adequacy before 1974.

THE COURT: I am asking it of him now.

THE WITNESS: It is my opinion today.

THE COURT: You realize prior to the Turecamo the only groundings in recent years preceding it were, insultingly the Coast Guard twice, although one of those was apparently held to be gross navigational error unrelated to the aid; that after the Turecamo there have been, I believe, three oil barges running aground on that rock in the next four years.

Are you familiar with that?

THE WITNESS: Yes, sir.

THE COURT: So despite the recent groundings, you still believe the aids in the area are adequate?

THE WITNESS: Yes.

Q Would you please tell us the basis of your opinion?

A Well, I am familiar with the incidents that have taken place, that is, that they occurred, and I am familiar with the Coast Guard ones as to why they occurred and with one exception, I believe all these incidents involved traffic which was going up the river and out of all those incidents, only one of them is a downbound situation.

Primarily what I am basing my estimation on, with the many transits made through there, there are relatively few accidents. The accidents were due to basically human error and not due to the aid that was on scene at the time.

MR. BESHLIAN: Your Honor, we move to strike the answer.

MR. KIMBALL: It is entirely based on hearsay.

THE COURT: For an expert to form an opinion whether to install aid, he is not expected to have been personally involved in every prior incident. His knowledge of the incident must be based on hearsay and an evaluation of the events that occurred. There is no possible way he can have firsthand knowledge of it.

MR. LOSQUADRO: His conclusion there were navigational errors involved is based on hearsay.

THE COURT: Not necessarily. I am assuming he has reviewed some of the files of the incidents, if not all of them. That is for you to go over in cross examination.

MR. LOSQUADRO: The only files he can review properly are the ones in evidence.

THE COURT: It is true that you have gathered together a better collection than the Coast Guard had available to it a couple of years ago.

MR. LOSQUADRO: We found them at the Coast Guard offices.

THE COURT: I am assuming all of this having been unearthed and the Commissioner of Environmental Proceedings of New York State having written such a strong letter to the Coast Guard, that there has been an extensive consideration of all reports submitted in modern times of casualties in the area before the Coast Guard took the position it took.

Am I correct, Captain?

THE WITNESS: Yes, sir.

I don't know whether it is appropriate for me or not. I would like to point out I did not say navigational error.

MR. KIMBALL: You said human error.

THE WITNESS: Yes.

MR. KIMBALL: Which could be on the part of the Coast Guard.

MR. SCHULMEISTERS: I object. He will have his chance to cross examine.

THE COURT: Wait until cross examination.

Q Captain, in your position as Chief of Aids to Navigation, do you have contact with pilots of the Hudson River?

A Yes.

Q Do you occasionally discuss the navigational aids in various areas with the pilots?

A Yes.

Q Do you discuss the Hudson River, particularly?

A Yes.

Q Has your office from time to time received some requests with respect to aids to navigation from these pilots?

A Yes.

MR. KIMBALL: Your Honor, he is leading.

THE COURT: He is but we are trying to move this along and these are not crucial areas.

MR. SCHULMEISTERS: Your Honor, I have here some documents from these letter files that Mr. Kimball asked us to produce which are after '74 and this offer of proof basically goes in connection with your ruling that subsequent accidents were allowed as to the dangerous condition and this is in rebuttal.

THE COURT: Not from the standpoint of the Coast Guard's notice prior to 1974 but from the standpoint of the extrinsic or objective danger present there.

MR. SCHULMEISTERS: That is right.

Q Captain, who is E.J. Ireland?

A He is with the Hudson River Pilots Association.

MR. SCHULMEISTERS: Would you mark this as NN1?

xxx (Government's Exhibit NNL marked for identification.)

spokesman for the Hudson River Pilots Association?

A Yes.

Q With respect to requests for changes of buoys or additional buoys, the ones that the pilots have been requesting, what area do they deal with?

A Haverstraw Bay.

Q Have there been any requests to your knowledge, and while you have been there, for changing any buoys or any aids in the area of Con Hook?

A No.

MR. KIMBALL: Objection.

Q Any request for changes with respect to buoy 25?

MR. KIMBALL: Objection.

THE COURT: I still don't understand where you are going.

I wish you would make an offer and state the relevancy.

MR. SCHULMEISTERS: At this point I would like to make the offer of these letters. It is for the purpose of, the Hudson River pilots who know the river do not consider that Con Hook Rock area such that it requires a priority change of aid.

THE COURT: Wait a minute.

What you are really offering is a series of requests you expect people on tug boats to be able to navigate the river?

THE COURT: The question is too broad. I am not sure I understand it.

Would you make an offer of proof so we can see what you are trying to establish here?

MR. SCHULMEISTERS: There should be familiarity with the river.

THE COURT: That is a different question completely.

Generally speaking, Captain, should a person attempt to navigate the Hudson who has no prior familiarity with the river other than a trip or 26 years earlier as a deckhand? Should he attempt to do it at night with ice in limited visibility?

THE WITNESS: No, sir.

MR. KIMBALL: Object to your question.

THE COURT: I know, but it has been answered by several other people and there is no dispute about it.

MR. KIMBALL: We dispute it.

THE COURT: Would it be acceptable if he had available to him an experienced navigator with whom he could consult and call upon whenever in doubt or danger?

THE WITNESS: Yes, sir.

Q Such a man as you were using in answering the judge's it is a mute motion, but I think it is overbroad.

THE COURT: I agree with you but until one knows what is involved, it is difficult to assess it and I think the witness will help limit the area in question.

MR. BESHLIAN: Your Honor, the subpoena was supposed to have been directed to Mr. Harold Koch and it reads to Red Star Towing, Attention Mr. Harold Koch. So I assume this must be construed as not requiring Mr. Koch to attend. He had been the senior dispatcher and we thought that information elicited from Mr. Koch with respect to the operation preceding this would have been significant from the Court.

THE COURT: Let's see what this witness can tell us about the situation.

PHILIP KEENAN, called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KIMBALL:

Q Would you state your address for the record?

A Speonk, New York.

Q By whom are you employed?

A Red Star Marine Services.

Q For how long have you been employed by Red Star?

A Five years.

Q What capacity are you employed by Red Star?

A Dispatcher.

Q Have you been a dispatcher for five years?

A That is correct.

Q Prior to your employment by Red Star, what did you do?

A I was a deckhand aboard tug boats.

Q For how long?

A Approximately eleven years.

Q For what company did you work?

A I worked for several.

Q Did you work for Red Star?

A Yes, I did. I worked for Red Star in New York and also Red Star Towing Company in New Haven.

Q Can you tell us what your duties as a dispatcher are presently?

A Basically --

THE COURT: Presently or in 1974?

MR. KIMBALL: Presently first, then I will ask him if they were the same in 1974.

A Basically to assign tugs to barges, to transport barges from one port to another.

Q Out of what office do you work?

A 500 Fifth Avenue.

Q Were your duties the same in 1974?

A They were.

Q If you can, tell us what criteria you would have used in 1974 in dispatching any given tug on any given job?

A Well, first I would have to choose from the boats that were available for a particular job. Then the suitability of the boat as to power, draft, height of eye, perhaps other critera, then the crew.

Q Are these same criteria used by you and other dispatchers at Red Star today?

A They are.

Q Do you have personal knowledge of the dispatching procedures and criteria followed by other tug boat companies in New York?

A Some knowledge to that effect.

Q How would you have gained this personal knowledge?

A Speaking to other dispatchers in the course of the work and knowing one or two dispatchers outside of work or having spoken to them briefly.

Q Can you compare the procedures used by Red Star with those used by other tug boat companies?

MR. SCHULMEISTERS: Objection. I think this is too broad.

THE COURT: He has given us three criteria. I take it the question is addressed to whether or not these criteria are the ones generally used in the industry.

I think his knowledge, his basis of knowledge is fairly limited, so I will not give it a lot of weight but whatever weight it can have, do you have other companies employ the same criteria in dispatching tugs?

THE WITNESS: To my knowledge, they do.

Q Mr. Keenan, were you on duty on February 2, 1974?

A Yes, I was.

Q What time, if you recall, did you come on duty that day?

A Approximately 1600.

THE COURT: What is the date, again?

MR. KIMBALL: February 2, 1974.

Q Do you recall what time you went off duty?

A Approximately 0800, the following morning.

Q Did you dispatch any tugs on that night?

A Yes, I did.

Q Did these include the Ocean Prince?

A It did.

Q Where was the Ocean Prince when you assigned it to whatever job it was assigned to?

A My handwriting first appears when the Ocean Prince was located at Bushey's dry dock. That is Gowanus Creek.

Q Mr. Keenan, I see you are referring to a document. Perhaps you can identify that.

A This is known as the tug control record, which is a record of the movements of, in this case, tug Ocean Prince for the 24 hour period beginning midnight on February 2nd and ending on midnight -- starting at 0001 on February 2nd and ending at midnight and a similar sheet from 0001 on the 3rd to midnight on the 3rd of February, 1974.

Q This is the dispatching log for February 2nd and 3rd for the Ocean Prince?

A That is correct.

Q And this log contains entries made by you?

A It does.

MR. KIMBALL: We would like to offer this -- we had premarked it but we premarked a Xerox copy as Red Star 21 for identification.

THE COURT: Any objection?

MR. BESHLIAN: No objection.

MR. SCHULMEISTERS: No objection.

(Plaintiff's Exhibit 21 received in evidence.)

Q Do you recall what job the Ocean Prince was assigned to for that night?

A Yes.

Q Can you tell us what it was?

A It was to tow the barge New London from Constable Hook, Bayonne, New Jersey, to Kingston Oil, Kingston.

Q Do you recall the makeup of the crew on board the Ocean Prince on February 2nd when you came on duty?

A John Kiernan was the captain, Walter Reimer was the mate and beyond that, I can't remember.

Q Do you know what other crew members would have been on board?

A There would have been two deckhands, a cook and I believe the boat was automated at that time, and it would have had one engineer.

Q You stated that John Kiernan was captain. How did you know that Kiernan was captain?

A I was told by the day dispatcher, Mr. Robert Fitch, and I might have seen it from a crew list. Either from the crew list or been told by the day man.

MR. BESHLIAN: Your Honor, I object to this as strictly hearsay, what he was told by Mr. Fitch --

THE COURT: I was wondering when I was going to hear that.

MR. BESHLIAN: Or what he might have seen on a crew list.

THE COURT: If he saw it on a crew list, that wouldn' be hearsay, but he is not sure he saw it.

What hearsay exception do you believe this falls into?

Wait a second, I think I see a different point.

From the standpoint of the reasonableness of his actions in assigning the tug, I think he is entitled to say on what basis he acted and he acted on the basis that he was told that Kiernan was captain.

So from his personal standpoint, I suppose that is admissible.

As to whether it is admissible to show in the abstract Kiernan was the captain, that is another question.

MR. KIMBALL: I was going to ask him some additional questions about this.

THE COURT: All right.

Q You referred to a crew list. In the normal course of operation, is a crew list prepared and distributed to the dispatcher?

A It is made up on Friday and distributed to the dispatchers for use over the weekend and through the following week.

Q Was February 2nd a Saturday, if you recall?

MR. KIMBALL: That is a matter of record.

A I believe it was a Friday night, but I am not sure.

MR. LOSQUADRO: We believe February 3rd was Sunday.

THE COURT: Then you believe the witness is wrong?

MR. KIMBALL: I think the witness hasn't looked at a calendar for 1974 recently.

THE COURT: Who has?

MR. KIMBALL: I happened to the other day just to be sure.

Q Can you describe this crew list?

A Yes. It consists of a stub and column arrangement. Across the top of the page are the various positions on the tug, captain, mate, deckhand, engineer and cook. Down the left column of the list are the names of the tugs, then a man's name is written in each box.

Q So there would be a designation for captain and a man's name next to it and a designation for mate and a man's name next to it?

A That is correct.

Q You are saying you may have seen this but you don't specifically recall?

A No, I don't.

Q When you relieved the dispatcher who preceded you, do you in the normal course of operation discuss with him the crew members on each of the tugs?

MR. SCHULMEISTERS: Objection, leading.

THE COURT: Overruled.

A No.

Q Did you discuss it with Mr. Fitch?

A Yes, I did.

Q Mr.Fitch was the day dispatcher?

A Yes.

Q Is Mr. Fitch still employed by Red Star?

A He is.

MR. KIMBALL: Your Honor, Mr. Fitch is presently recovering from a heart attack.

THE COURT: Why put it on your basis? I take it you are not acquainted with Mr. Fitch and I take it the witness is.

Where is Mr. Fitch?

THE WITNESS: Mr. Fitch is at home recovering from a heart attack.

THE COURT: How long ago did he have the heart attack?

THE WITNESS: About three months.

THE COURT: How old a man is he?

THE WITNESS: Mid fifties.

THE COURT: Is he expected back at work soon?

THE WITNESS: I believe he is having a medical examination in a month, then they will decide on some schedule for him.

Q Prior to dispatching the Ocean Prince on this job, had you had any previous contacts with John Kiernan?

A I had.

Q Can you describe those for us?

A Yes. Our company shared a room with Spentonbush Transportation Company and we also shared the same VHF radio frequency, so I was familiar with his work from hearing him dispatch and hearing him speak over the VHF and also discussing his performance with various dispatchers of the Spentonbush Company.

Q Did you have any previous contacts with Mate Reimer, as a dispatcher?

A Limited. He had been working primarily in the south and I imagine at one point or another I may have spoken to him over the single side band or Pisces operator and taken some information from him, but when a man is working that far away, he is not dispatched as closely as someone who would be working in the harbor.

Q In assigning the Ocean Prince to do this job, did you consider each of the criteria you referred to previously?

MR. SCHULMEISTERS: Objection.

THE COURT: Overruled.

A We did.

Q Did you consider the suitability of the tug for the job?

A I did.

THE COURT: You don't have to go over them one at a time. He said he considered all three of the criteria. If you want to focus on the personnel, you might as well do so.

In assigning the tug to the voyage, did you consider the familiarity of its personnel with the waters it would be traversing?

THE WITNESS: I did.

THE COURT: In what respect?

THE WITNESS: In respect of whether the men -- their particular experience in the Hudson River.

THE COURT: What was Mate Reimer's familiarity with the Hudson River?

THE WITNESS: To my knowledge at that time he was generally unfamiliar with the Hudson River.

THE COURT: How about Mr. Kiernan?

THE WITNESS: Fully experienced with the Hudson River and in my opinion one of the best boatman in the combined two companies.

Q After assigning the tug on this job, did you have any other contacts with the vessel during the night?

A I may have had. It would be routine to receive a VHF transmission giving an ETA. That would be routine. I don't know whether I received that communication. I do recall sometime in the early a.m. I received a call from the marine operator from John Kiernan where he stated he had hit something in the vicinity of Con Hook Island.

Q I would ask you to look at Exhibit 21 and tell us which of the entries you made and describe for us what they indicate.

A Beginning February 2nd?

Q Yes.

A My first entry shows the tug Ocean Prince running light from Bushey's dry dock to Constable Hook from 1800 to 1830.

My next entry shows the tug standing by at Con Hook from 1830 to 1850. Then commencing at 1850 and going through the balance of the day to 2400, towing the barge to New London from Con Hook enroute.

Picking up on the 3rd, the barge New London enroute at 0001 and that is the last entry in my handwriting.

Q I am going to show you another document and ask you to identify that.

A This is what is known as the job card for the barge

New London from Exxon,Con Hook to Kingston Oil and shows a return trip from Kingston Oil to Standard Tank, Bayonne. It is the primary operating document that we use.

Q Is this on a form that is normally used by Red Star or was at that time?

A Yes, it is.

Q What is the purpose of a job card?

A To keep track of the movements of the units we tow and to provide, I believe, a basis for billing.

Q Can you identify any of the entries on this document as having been made by you?

A Yes, I can.

The entries I made consist of showing the tug Ocean Prince towing this unit commencing 1850 on the 2nd of February and the voyage ending on the 3rd of February at 0300 on the south side of the Bear Mountain pier.

I believe this is my entry showing the unit standing by -- showing the tug Ocean Prince standing by this unit at 0300.

I also made a notation here that says "See report."

MR. KIMBALL: We would offer this in evidence as the next exhibit.

(Plaintiff's Exhibit 39 marked for identification.)

VOIR DIRE EXAMINATION

BY MR. BESHLIAN:

Q Mr. Keenan, I notice in examining 39 for identification, there is an overwrite on the time. Can you explain why the change?

A The time below shows 0900 on the 3rd of February. That is written below and half above and half below the line and that is a common practice for us to show the ETA of the unit.

In other words, at some point I received an ETA from the tug for 0900 to Kingston Oil before this difficulty arose.

Q So that was written in at a time prior to this 0300 entry?

A That is correct.

Q Then you just wrote 0300 over?

A That is correct.

Q Next to it there is a substantial amount of erasures. Did you make those?

A Yes, I did.

Q Can you tell me what the changes were?

A Yes. Not expecting this to occur, I believe I had written Kingston Oil in there which would have been the designation of the unit. I believe you can see the "K".

Q That is what it looks like.

At the time you were notified of the casualty, you erased Kingston Oil?

A Sometime during the evening I did and replaced it with that.

MR. BESHLIAN: No objection.

MR. SCHULMEISTERS: No objection.

(Plaintiff's Exhibit 39 received in evidence.)

BY MR. KIMBALL:

Q Mr. Keenan, Exhibit 39 makes reference in your handwriting to a report. I show you a document and ask you if you can identify that as your report.

A Yes, this is the report referred to on the job card.

MR. KIMBALL: Would you mark this?

(Plaintiff's Exhibit 40 marked for identification.)

Q Can you tell us when you prepared this report?

A I began preparing the report, I imagine, shortly after I received word from John Kiernan that he had struck something. Then I continued adding to the report through the night.

Q Was this made contemporaneously with receipt of information from the tug or was it made subsequently?

A Made more or less as it was happening.

MR. KIMBALL: We would offer this, your Honor.

MR. SCHULMEISTERS: I have an objection, your Honor.

It appears to be hearsay as to the buoy, which, obviously, this man could not have been there or seen what occurred.

THE COURT: For what purpose is this document being offered?

MR. KIMBALL: The purpose, your Honor, really has to do with damages more than anything else, and it is also a contemporaneous report maintained in the regular course of business by this dispatcher of the events as reported to him from the tug and I believe it has some relevance.

MR. BESHLIAN: Your Honor, it contains information which was reported to this man. I don't think it is admissible on the ground that some of the statements in there are strictly hearsay.

I believe there is testimony from those who were on the scene that somewhat correlates that.

THE COURT: Do you know of any exception to the hearsay rule this falls under?

MR. KIMBALL: We would submit it is a business record.

THE COURT: It is a business record. That gets it into evidence without producing the person who made the record, but as to the content of it, the witness who created this was merely writing down what various people told him, I think primarily Kiernan.

MR. KIMBALL: Past recollection recorded?

MR. SCHULMEISTERS: It is still hearsay.

In addition, I have also another objection. In the early stages of discovery I asked for all reports concerning the accident. Today is the first day I see it.

THE COURT: Is there any other grounds or reason for putting this in?

MR. KIMBALL: The ones I stated are really the end.

THE COURT: I will sustain the objection. It has insufficient evidentiary value and reliability for the purposes offered.

MR. KIMBALL: I would have no further questions at this time.

THE COURT: Cross examination.

CROSS EXAMINATION

BY MR. SCHULMEISTERS:

Q Mr. Keenan, as I understand it, you were told by Mr. Fitch as to what the crew would be?

A That is correct.

Q You, yourself, did not discuss Mr. Kiernan's joining the tug, did you?

A Him joining the tug?

Q Yes.

A No.

Q Did you discuss Mr. Reimer's joining the tug?

THE COURT: With whom, with the day dispatcher or with Reimer?

MR. SCHULMEISTERS: Did Mr. Keenan discuss with you --

THE COURT: Did you talk with Kiernan in dispatching him to the tug?

THE WITNESS: No.

THE COURT: And you didn't talk with Reimer, either?

THE WITNESS: No. I thought the question was did I talk with Mr. Fitch.

THE COURT: So did I.

Q And you did not talk to Mr. Kiernan about Mr. Reimer joining the tug?

A No, I did not.

Q Incidentally, I note on Exhibit 217, on the second page where you have New London enroute, then there is an erasure and apparently written over Con Hook Island.

A That is correct.

Q What was written underneath that?

A The handwriting -- the person -- another person made the entry on top of this.

What appears to have happened is the same thing on the job card. If you look closely, you will see that Kingston Oil, you can see the beginning of the KIN was originally written in my handwriting because that is where I expected the barge to go and when this incident came up, it was subsequently changed by William Small, the dispatcher the next day. I made the original entry and some one else made the change on this control record, this tug control record.

Q When is this tug control record made out?

A Usually as the movements are being made.

Q You went off duty at eight in the morning on the 3rd?

A That is correct.

Q By that time you knew that the barge didn't get to Kingston?

A That is correct.

Q But by the time you left, you had not made the change?

A That is correct. I will change that. I am not sure. It is possible -- no, it is unlikely. I will say I did not make the change.

Q The crew list that you mentioned, you said this was prepared on Friday usually?

A That is correct, for over the weekend and the following week.

Q Friday is the 1st. Would that crew list be made out as of that day as to what persons are on board the tug?

A No. If the day we are referring to is a Friday, the crew list that would cover that Friday would have been made out the previous Friday, seven days before.

THE COURT: Assume it was a Saturday, however.

THE WITNESS: The same answer. The crew list would have been made out the previous Friday. The crew list normally change on Monday and Tuesday. The list is made up on Friday by the personnel manager to be given to the dispatchers over the weekend so they might arrange the crew changes for Monday and Tuesday.

Q Did that crew list have both Mr. Kiernan and Mr. Reimer on it?

A I can't remember any details on it at all. I can't remember if there was one, if I saw one. I am sure there was one but I don't recall seeing it on this occasion.

Q Do you know where the crew list is?

A I do not.

THE COURT: How long are they kept?

THE WITNESS: I don't know. They are returned -- once the week is over and we receive a new one, we return the old one to the personnel department and what they do with it, I don't know.

MR. KIMBALL: I have been told by Red Star that they do not have it any more.

Q If the tug is to have a change in crew in the middle of the week, how come the crew list is made up on Friday?

THE COURT: I don't understand that question.

Q What confuses me is, I understood you to say the crew is usually changed on Monday or Tuesday.

THE COURT: The list is made up on Friday foresees this and lists the change of crew effective Monday or Tuesday?

THE WITNESS: It is normal that crews change on Monday or Tuesday, but people in personnel work nine to five Monday through Friday so they must hand us that document, that data in advance.

THE COURT: What I am asking you is: when you get it on Friday, does it show the weekend crew and then also show who is to be on the new change of crew Monday and Tuesday?

THE WITNESS: At that point we still have the old crew list made up a week before to take us through the weekend.

THE COURT: You lost me. Let's simplify this.

Assume the first of the month is a Friday, the

2nd is a Saturday, the 3rd is a Sunday. The new crew list comes out on Friday, the 1st. What dates does it cover?

THE WITNESS: The 4th.

THE COURT: It doesn't start until the 4th?

THE WITNESS: That is right.

THE COURT: They put it out on Friday and it gives you the new crew coming in the following week?

THE WITNESS: That is correct.

THE COURT: For the 2nd and the 3rd, you have to use the prior week's crew list which covers the subsequent weekend?

THE WITNESS: That is correct.

THE COURT: What happens then when there are changes in crew assignments that are not foreseen ten days in advance or nine days in advance?

THE WITNESS: Any number of things can happen. We can be told verbally that a man is coming aboard. We might receive a note on a small piece of paper that so and so will replace so and so on a certain boat at a certain time and sometimes a notation is made on a crew list.

THE COURT: And you mentioned that the day dispatcher told you about Kiernan being on board and being the captain. Would he have normally done that if Kiernan had been listed so on the crew list?

THE WITNESS: Probably not.

THE COURT: That suggests that Kiernan was not on the crew list and that is why the day dispatcher told you about it?

THE WITNESS: I think that is probably right.

Q You had never met Mr. Kiernan yourself?

A Personally, no, I had not.

Q Basically, all your testimony about what type of man Mr. Kiernan is is based upon what someone may have told you?

A That and observation of the fact -- hearing him dispatched by a company that was dispatched on the same frequency and the same room, and I was able to judge his performance by the times he turned in and, for instance, in the case of Mr. Kiernan, that he would do jobs that other people wouldn't.

Q It is all basically what you overheard someone saying?

THE COURT: On this radio that you share with Spentonbush, can you hear the tug captains reporting in to the dispatchers?

THE WITNESS: Yes.

THE COURT: So you heard Kiernan's voice reporting in on various occasions and talking with the Spentonbush dispatcher?

THE WITNESS: Yes. I could judge him as well as I could judge almost a man from our own company at that time.

Q So basically the way that you judge the tug man is the reports they turn in as to how fast it takes them to do a job?

A That is one element of it.

Q But you have no access to any kind of personnel record?

A No.

MR. SCHULMEISTERS: Nothing further.

CROSS EXAMINATION

BY MR. BESHLIAN:

Q Do you recall when your work week started back in February of 1974?

A It is simple to figure out. I work every third night from 1600 to eight the following morning.

Q So that you were not working on February 1st?

A No.

Q Do you know when Captain Kiernan joined the Ocean Prince?

A I do not.

Q Were you told when he joined the Ocean Prince?

A I was not.

Q During your discussions with Mr. Fitch?

A No.

Q Do you know when Mr. Reimer joined the Ocean Prince?

A I did not.

Q Did Mr. Fitch tell you that, sir?

A No, he did not.

Q In dispatching vessels such as the New London for a trip from New Jersey to Kingston, New York, is there some advance preparation made for a trip such as that?

A No.

MR. KIMBALL: By who?

THE COURT: By the dispatcher?

MR. BESHLIAN: Yes, your Honor. In dispatching, by the dispatcher.

A It is the sort of a job that usually present no special problems and most every tug that Red Star has could do the job and it is not an unusual long distance and no preparations are required normally.

Q When you say not an unusually long distance, do you have any idea in dispatching tugs, what it takes from Con Hook, New Jersey, to Kingston and back again?

A About 36 hours.

Q Do you make any advance preparation for the assignment of any tug to do a job such as that?

A Yes, we do. If we have notice -- well, we try to think ahead, as far ahead as the information is presented to us.

Q Do you have any indication when you first learned that the New London would have required towing to Kingston, New York?

A Yes. That appears on the job card that according to this, the order was placed on the 1st of February, received by H.D. from D.S.

Q Who is H.D.?

A Henry Dean.

Q D.S.?

A Dick Sardella.

Q Do you know who those gentlemen are?

A Yes.

Q Who is Henry Dean?

A He was at that time day clerk for Red Star.

Q Dick Sardella?

A Dispatcher for Pittston.

Q This is on February 1st?

A That is correct.

Q Was the tug Ocean Prince selected on February 1st as the vessel to tow?

A I do not know.

Q You can't tell that?

A No.

Q Do you have any indication on the job card when the Ocean Prince had been selected, or was it in fact selected by anyone prior to your coming on watch on February 2nd?

A It may have been, but I have no record of it.

Q Is there any written record prepared in the dispatching office other than the job card when an order is received?

A Not to my knowledge.

Q When you look for a vessel in advance, how would you make a record of using that particular vessel once you have selected it?

A Once we made the selection?

Q Yes.

A We have a procedure where we keep a stack of job cards beneath a large square designating each tug and what we intend to do appears on the job cards sequentially from top to bottom.

Q Would you have given advance notice to the tug with respect to the particular job?

A Possibly.

Q Is it a practice to tell the tug that you expect to send him on a trip for something other than around New York Harbor?

A It is often done.

Q Can you tell whether it was done at this time?

A I can't.

Q There is no record which would indicate such?

A I don't think there is.

Q Is there any record that you have or that you know of which would indicate when the Ocean Prince was first given notice that it was to tow the barge New London?

A No, there is nothing to indicate that.

Q Do you know of your own knowledge whether they were advised prior to the time you made the entry on the log sheet, the activity sheet for the tug?

A I don't know. Bob Fitch may or may not have told them it was a possibility or a certainty.

Q Did you select the tug New London as being the vessel to do the tow?

A You mean the tug Ocean Prince?

Q To tow the New London?

A It was a joint decision between myself and Robert Fitch, but looking at the time, it would appear I was the person who actually sent him to the job.

Q I can understand that, Mr. Keenan, but you say you and Mr. Fitch sometime prior to the actual dispatching of the tug concurred that the Ocean Prince was the vessel to do the job?

A That is correct.

Q And that conference would have taken place after you came to work at 1600 hours, which is four o'clock in the afternoon?

A That is correct.

Q At that time you had a conference with Mr. Fitch and you discussed using the Ocean Prince with the qualifications of the men that were on board that were going to steer the tug? Were they discussed?

A They were.

Q Was it resolved at that time that Mr. Kiernan had experience in the Hudson River?

A It was.

Q And that Mr. Reimer had no experience?

A That is correct.

Q Do you know what time you notified the Ocean Prince that she was to do the towing? Do you have any indication on your job card?

A Well, I dispatched the boat from Bushey's to Con Hook at 1800, so I imagine I would have given that order approximately that time.

Q At about that time?

A Between 1730 and 1800.

Q So there was no conversation between yourself and the tug between 1400 and 1800?

A Not that I can remember.

Q When you dispatched the boat at 1800, do you know who was on watch?

A I can't remember.

Q Did you discuss at that time, did you notify -- did you ask to talk to Captain Kiernan at that time?

A I don't think so.

Q Did you, in fact, talk to Captain Kiernan at any time from the time you came on watch until the time the Ocean Prince was dispatched to tow the tug New London?

A I don't think I talked to him.

Q Did you talk to him when you dispatched the vessel?

A I am not sure.

Q Would you have recognized Captain Kiernan's voice if you heard it?

A I would have.

Q Yet you don't recall?

A I do not.

Q Did you have any conversation with the man with whom you talked with respect to the qualifications of the pilothouse crew?

A You mean with the day dispatcher, Mr. Fitch?

Q With the man on the boat with whom you spoke.

A No.

Q No discussion at all?

A No.

THE COURT: Is it necessarily the captain or the mate or might the deckhand take such a message, or the engineer?

THE WITNESS: On the VHF radio?

THE COURT: Yes.

THE WITNESS: Occasionally a deckhand will answer the VHF, but usually we do not pass any messages to deckhands, we wait to speak to the officers direct, the deck officers.

Q Mr. Keenan, would you recognize Mr. Reimer's voice if you heard it?

A I don't think so.

Q I know some time has gone by, but do you recall whether the voice you spoke to at the time you called the tug to tell them to pick up the New London was a familiar voice?

MR. KIMBALL: Objection. He already said he doesn't remember who he spoke with.

THE COURT: Yes.

A I can't remember.

Q If you did not recognize the voice of the party with whom you were speaking, would you have asked him to identify himself?

A No. I would imagine I would have assumed that it was Mr. Reimer.

Q Do you make any entries in any kind of a radio log showing the times these vessels are dispatched?

A We do not.

Q You don't maintain a radio log?

A We do not.

Q Am I correct that you did not discuss the qualifications of the pilothouse personnel with either of the two men?

A With either of the two men on the boat, no.

Q As a matter of practice, Mr. Keenan, if you have a man who does not have experience in certain local waters and you know him to have been engaged in towing operations outside of New York and as you said you had minimal contacts with Mr. Reimer because he was down south and that you would have had an occasional single side-band radio message with him, do you make it a practice to advise the other man on the boat of the man's experience?

A A practice, no.

Q Do you have any instructions from the office to advise the other man on the boat with respect to the experience or lack of experience of the man with whom the pilothouse is being shared?

A No. We assume they will talk to each other.

Q You assume they will talk to each other.

Is this the standard you follow in dispatching vessels?

A It is.

Q And it is a practice that is followed in the office?

A It is, to my knowledge.

Q Is there any instruction, either written or oral handed down by the chief dispatcher to all the dispatchers to discuss the experience of the personnel in the pilothouse?

A There is nothing written like that that I know of.

Q So that anytime a vessel is dispatched, the onus is upon the men in the pilothouse to discuss their qualifications between themselves?

MR. KIMBALL: Objection to the characterization.

THE COURT: Yes. Sustained.

Rephrase the question.

Q Is there a time when there is an instruction given to the men in the pilothouse to ascertain the experience of each other, and by that I am assuming there are only two men assigned to the pilothouse.

THE WITNESS: Can you repeat that?

THE COURT: I don't think your question is clear. I think what you are trying to ask him is in terms of the people aboard the vessel, and assuming they haven't been together for a long period of time.

MR. BESHLIAN: Or ever, your Honor.

THE COURT: And assuming they are not going to traverse a route that the two of them have previously been along, you are asking him at what point relative to the commencement of the voyage should they discuss with each other their familiarity of the waters.

MR. BESHLIAN: Not quite. I am asking if this is the only criteria that the office has, is that the men discuss between themselves their experience for the waters within which they are going to operate if they have never operated together.

THE COURT: That is not what he stated is a criteria. He said a criteria was taking into account the knowledge of the deck officers of the waters they would be traveling on. Then when he was asked if you had an inexperienced person, the inexperienced person would learn about it since they don't tell him about it, and he responded that he assumed the deck officers would discuss their familiarity or unfamiliarity.

It is not a criteria situation at all.

Put another question.

MR. BESHLIAN: No questions.

THE COURT: I have a subject on which I am interested.

On all these questions, assume we are talking about February 2, 1974, and if there has been a change in company procedures since then mention it.

Does Red Star maintain a list of seniority of its deck officers?

THE WITNESS: They do.

THE COURT: Is it available to the dispatchers?

THE WITNESS: On request.

THE COURT: If and when you put a brand new crew aboard a tug and you have two deck officers, what do you use to determine who will be the captain and who will be the mate?

THE WITNESS: I do not determine that.

THE COURT: Who does?

THE WITNESS: The personnel department.

THE COURT: Do they advise you? Is it on the crew list?

THE WITNESS: It could be either.

THE COURT: ·ho notifies the personnel involved of the designation, personnel or dispatcher?

THE WITNESS: Personnel usually when the man is hired. I think he is told what position he is to fill.

THE COURT: Think now when you are shifting crews around, you have people hired a substantial period earlier, and let's assume that you have two people who are capable of serving as captain and have served as captain. Who makes the decision which of the two who have moved onto the vessel will serve as captain and how is it communicated to the people involved?

THE WITNESS: To the best of my knowledge, the personnel department tells them what position they will hold and tells it to them when they are hired and usually communicates that information to the dispatcher.

THE COURT: Let's assume they were hired many years earlier. You have two men hired many years earlier, they have no on-going connection with personnel and the only thing that is happening, is that they are being transferred from one tug to another. Do you follow that?

THE WITNESS: Yes.

THE COURT: Let's assume that either one of them is capable of serving as captain. These two men come aboard the vessel, let's say they came aboard the same time. Who tells them and how are they told as to which of the two is to be the captain?

THE WITNESS: I would imagine they would be told when they were assigned to the vessel, what position they would hold.

THE COURT: Who makes vessel assignments for deck officers?

THE WITNESS: The personnel department.

THE COURT: It is not a dispatcher function to make personnel assignments to the vessel?

THE WITNESS: It is not.

THE COURT: So when you are using borrowed personnel from Spentonbush, is there any change in the routine you have just described?

THE WITNESS: Possibly. The personnel departments -- it is one personnel department with, I believe, one man who handles Red Star and one man handles Spentonbush and their procedure may be different.

THE COURT: There is one man for two companies but he may do it differently for one company than the other?

MR. KIMBALL: That is not what he said.

THE WITNESS: There are two men, one man for each company and I am familiar with Red Star -- I believe the procedures are slightly different.

THE COURT: What I am asking, when Red Star borrows a Spentonbush deck officer and puts him on a vessel, would he learn of his assignment from the Red Star personnel man rather than the Spentonbush personnel man?

THE WITNESS: That I wouldn't know.

THE COURT: It may well be a lot of this is outside your area of knowledge but let me put to you a hypothetical.

On a given tug you have Mr. A and he is serving as captain. Mr. B is borrowed from Spentonbush and assigned to the same tug and told he is to be the mate. The next day Mr. C who was formerly on the vessel but has been on vacation returns to the vessel and replaces Mr. A. Mr. C, in returning to the vessel, has not been given any instructions as to whether he is the captain or the mate since he really is coming back from a vacation and not going on a new assignment. Mr. B who was sent on the vessel is a mate, would he be given any instructions or would Mr. C be given any instructions as to which of the two of them is to serve as captain at that time, and if so, from whom?

THE WITNESS: I would imagine he probably would and it probably would come from personnel.

THE COURT: Who would personnel speak to, at what time and how?

THE WITNESS: I can only guess, but I would say probably when Mr. C returned, when he was returning to the vessel, he would be told what position he would hold.

THE COURT: Again, you are assuming this is the way personnel would handle it?

THE WITNESS: Yes. The only experience I have had, occasionally when two captains will be on a boat at the same time, the personnel department will usually, on the piece of paper saying the man will arrive, come aboard a boat at a certain time and place, their might be ment[illegible] that he will be either captain or mate.

THE COURT: Mr. Kiernan testified that when he went aboard the Ocean Prince on February 1st, there was a captain on board and that he served as the mate. The testimony is unequivocal that Mr. Reimer came aboard the next day on the 2nd. Mr. Kiernan says nobody ever told him he was to serve as captain.

Assuming the information given to you is correct from Mr. Fitch, namely, that Kiernan was intended to be the captain, who should have told Kiernan of the fact that he had been moved up from mate to captain on the departure of the captain and on the return of Reimer and how should it have been translated?

MR. KIMBALL: This could be beyond the witness' position.

THE COURT: He can say so.

THE WITNESS: I really don't know how to handle the "should."

THE COURT: How was it occurring in February of '74 if it ever occurred to your knowledge?

THE WITNESS: Well, the most reasonable way to have done that thing back then would be to have told Mr. Reimer coming aboard what position he was to hold and that would have settled the matter.

THE COURT: How would it have advised Kiernan of the fact he had been advanced from mate to captain by telling Reimer unless Reimer happened to mention it to Kiernan?

THE WITNESS: It would be something that he wouldn't fail to mention in my opinion. We assume that the men converse and tell each other things.

THE COURT: Is there any difference in the quarters occupied on the tug Ocean Prince by the captain and the quarters occupied by the mate?

THE WITNESS: Dramatic.

THE COURT: Describe the difference.

THE WITNESS: The captain sleeps, on the Ocean Prince, sleeps directly behind the wheelhouse on the upper deck. The mate sleeps in the main house on the main deck.

THE COURT: It is not as nice, in other words?

THE WITNESS: That is correct.

THE COURT: The state of the record is that Kiernan was sleeping directly behind the wheelhouse.

MR. LOSQUADRO: That is correct, sir.

MR. BESHLIAN: Your Honor, the record also states that Mr. Reimer was sleeping behind the wheel?

MR. SCHULMEISTERS: That is my recollection.

THE COURT: My recollection of the record is that Kiernan was directly behind the cabin because he was called and came up on deck real quick, up to the pilothouse real quick.

MR. BESHLIAN: I think the question posed to Mr. Kiernan was where would the mate Reimer have been sleeping and he said right in the quarters behind the wheelhouse.

THE COURT: Both in the same spot?

MR. BESHLIAN: I don't know.

THE COURT: With this business of one on and one off, except when they are in port, they could have used the same bed?

MR. BESHLIAN: Yes, they could have.

MR. LOSQUADRO: The two men wouldn't be sleeping at the same time. In port it wouldn't make a difference. There would always be one of them away.

MR. SCHULMEISTERS: My recollection is I specifically asked Mr. Kiernan that question where Reimer was sleeping and the answer was behind the wheelhouse.

THE COURT: Would you check the transcript and make sure of that -- you don't have that transcript?

MR. SCHULMEISTERS: No.

THE COURT: Let's assume for the moment that the facts are as stated by counsel and that both Reimer and Kiernan were sleeping in the captain's cabin. How else would Kiernan be made aware of the fact that he was the captain?

THE WITNESS: Well, making out the payroll.

THE COURT: They hadn't reached that point yet. The payroll hadn't been made out until after the event.

I think you don't know the answer.

THE WITNESS: I don't know. The only thing that occurs to me, if there was any confusion, it would be that the two men would call on the VHF and ask who is the captain.

THE COURT: I grant you that. However, if each of them thought the other was the captain, they might not have had occasion to call.

I tell you the record is clear, prior to the grounding, Kiernan and Reimer had two brief discussions of five or ten minutes each, total. That was the extent of their communication ~~with each other but~~ Fitch told you that Kiernan was to be captain, right?

THE WITNESS: That is correct.

THE COURT: But he didn't tell you that anybody told Kiernan about it?

THE WITNESS: No, he did not.

THE COURT: Anything further, gentlemen?

MR. KIMBALL: I would like to ask one or two questions.

REDIRECT EXAMINATION

BY MR. KIMBALL:

Q From the point of view of dispatcher, what difference does it make which of the pilothouse men is designated captain and which is designated mate?

A I think the captain has the final authority in certain operational and financial matters. He holds the grub money, fills out the payroll and may make the final decisions in long trips, for instance.

Q You said you discussed with Mr. Fitch the fact that Reimer had limited familiarity with the Hudson River?

A That is correct.

Q Can you tell us why in view of that fact the tug was nonetheless dispatched on this job?

A We considered the two men as a whole and we figured that the two of them would be more than adequate.

Q Does it take into account Captain Kiernan's experience?

A It does.

Q If Captain Kiernan had not been on board, would you have assigned the Ocean Prince on this job?

MR. BESHLIAN: Your Honor, I don't think that is a fair question.

THE COURT: I don't think it is necessary. He said he took the two of them together, so it would depend who the person was instead of Kiernan, but I will allow you to ask him would he have allowed the assignment of Reimer if the other person aboard was not familiar with the Hudson River.

Q Do you understand the question?

A Yes. You mean sending two men unfamiliar with the Hudson River?

Q Yes.

A No, I would not have sent the boat.

MR. KIMBALL: That is all.

THE COURT: All right, thank you. The witness is excused.

We will stand in recess until 20 after two.

(Luncheon Recess)

rk/lf

AFTERNOON SESSION

2:20 p.m.

THE COURT: As to the subpoena I found to be a duces tecum subpoena not calling for the personal appearance of the person to whose attention the subpoena was addressed.

MR. BESHLIAN: Thank you, your Honor.

MR. KIMBALL: Your Honor, prior to breaking for lunch, we mentioned that we wanted to produce evidence in the form of a document concerning Captain Kiernan's status as captain. We can do that either by reopening or I think on rebuttal. We have asked Mr. Kristiansen who did testify earlier to come down and identify the document and that would be the limited purpose of reopening.

THE COURT: We will treat him as being a rebuttal witness in that regard.

MR. KIMBALL: You want to put him at the end?

THE COURT: Yes.

MAX SCHWARTZ, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SCHWARTZ:

Q Mr. Schwartz, by whom are you employed?

A Corp of Engineers, New York District office.

Q In what capacity?

A I am chief of the statistical section, the operations division.

Q Let me show you four volumes entitled "Waterborne Commerce of the United States" and the volumes are for the years 1971, 1972, 1973 and 1974. Do you recognize what they are?

A Yes.

MR. KIMBALL: Your Honor, we ave already said we have no objection to these documents.

THE COURT: And I have the objection I want extracts from them, not the entire thing.

MR. SCHULMEISTERS: The extracts are here, your Honor.

THE COURT: Offer the extracts.

MR. KIMBALL: Our only point is, the traffic listed in there is not broken down month by month.

THE COURT: I am aware and the Coast Guard has given us an estimation as to the amount of diminimus during the winter months.

No objection?

MR. KIMBALL: No objection.

(Government's Exhibits 001 through 00 4 received in evidence.)

xxx

bring in here because it is considered to be confidential information.

THE COURT: You are building a basis for how they know how much oil goes up and down the river and you have shown how they have done it. There is no need to show the form they use for doing it. In fact, I have a suspicion when you get down to the end of it, there will be no real debate about their conclusions how much oil goes up and down different times of the year. I am starting with the obvious assumption a substantial portion of the oil is used for heating purposes and that heating is more necessary in the winter and, therefore, you get a lot of barges carrying oil in the fall and winter months.

Q Pursuant to my request, have you made a breakdown of the number of trips that went past Con Hook?

A Yes.

Q For what period have you done this?

A The period encoded December, '73, January, '74, February, '74.

Q Will you tell me, please, how many northbound trips were there in December, 1973?

A Approximately 234 northbound trips.

Q How many southbound?

A Approximately 613.

Q How many in January, 1974?

A 211 northbound, 258 southbound.

Q How about February, '74?

A 159 northbound, 232 southbound.

Q Does this breakdown that you have just given us, include every vessel?

A No, sir.

Q What does it not include?

A It doesn't include individual tug trips, the light barges when cargo is not carried and foreign tankers which we are not allowed to include.

Q Does the general listing contained in Exhibits 001 through 4 include the ones you left out in your breakdown?

A Yes. They are extracted from the information appearing in the annual report.

Q Where did you get this breakdown that you just testified to for December, '73?

A This was extracted from monthly print-outs sent to us by our statistical center.

Q Are they here in the courtroom?

A Yes.

MR. SCHULMEISTERS: I have no other questions of this witness, your Honor. The print-outs are right here. I don't see the reason for offering them.

THE COURT: Cross examination?

CROSS EXAMINATION

BY MR. LOSQUADRO:

Q Mr. Schwartz, are you aware today of any request made to the Army Engineers by the Coast Guard or anyone else to destroy or partially destroy the rock located south of Con Hook Island?

A No.

Q You have no information at all about that?

A Not that I know of.

MR. LOSQUADRO: No further questions.

THE COURT: It is not his area.

MR BESHLIAN: No questions.

THE COURT: You are excused.

(Witness excused)

THE COURT: You did say you were calling somebody from Corp of Engineers on that point.

EDWIN L. WORTMAR, called as a witness on behalf of the Government, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. SCHULMEISTERS:

Q By whom are you employed, sir?

A The U.S. Army Corp of Engineers, New York District.

Q What is your job, sir?

A I am the assistant chief of navigation branch operations division.

Q How long have you been so employed?

A As assistant chief?

Q Yes.

A Since 1974.

Q How long have you been employed in that section altogether?

A Since 1969.

Q Do you have with you any document which would indicate the widths -- withdrawn.

Do the Army Engineers have anything to do with channels in the Hudson River?

A Yes, we do.

Q Basically what do the Army Engineers do?

A We maintain a federally authorized project which is approximately 155 miles long from New York City to Waterford, New York.

Q On what basis do you do that?

A It was authorized by the United States Congress.

Q Would you describe the channel that the Congress authorized the Army Engineers to maintain?

A Basically it calls for a channel 32 feet deep, 600 feet wide from Kingston to New York City and 500 feet wide from Kingston to 2200 feet south of, I forget what bridge it is, south of the Albany Mall Bridge at Albany, New York.

Q With respect to the 600 foot wide channel, what is your authority for saying so?

A The authority for this is the House document from 83 Congress, House document No. 228.

Q Where does it talk about a 600 foot channel in this document?

A It talks about that -- it is reported Chief of Engineers, United States Army, Department of the Army, to the Secretary of the Army who, in turn, forwards it to Congress which authorizes the project under the River and Habor Act. This was authorized under the River and Harbor Act of 3 September, 1974, Chapter 1264, 83 Congress.

Q What page refers to the 600 foot channel?

A Page one of the document, paragraph two.

MR. SCHULMEISTERS: Your Honor, I have a Xerox copy of that page and the cover page.

THE COURT: Why are we pursuing this so energetically. I don't think anybody disputes the fact the channel is supposed to be 600 feet wide. At least so far as Kingston. I know it enters into this case collaterally because if the rock south of Con Hook still leaves a channel of more than 600 feet, MR. SCHULMEISTERS: Yes, your Honor.

xxx (Government's Exhibit PP received in evidence.)

Q Would you look at Exhibit BD, Mr Wortmar, and in the area where you see a symbol for a rock, south of Con Hook Island and the buoy there and it is marked with the letter E and let me also give you a pair of dividers and would you please measure for us the width of the channel in the area, please, or the width of the navigable waterway?

A According to this scale, it shows slightly over 1200 feet to the buoy from the 35 foot contour which is a dotted line on the east side.

Q In view of what you have said previously as far as the Army Engineers are concerned, is that rock inside or outside of the channel?

A Well, we do not maintain a channel line. Our document calls for us to provide a channel 600 feet wide and this is a naturally deep area. There were no channel improvements made in this particular part of the waterway under the authorizing document when the project was constructed. There was no need because there was more than a thousand feet at the time the project was constructed.

Q As far as the Army Engineers are concerned, there is sufficient water for the channel as requested by Congress?

A That is right.

MR. SCHULMEISTERS: That is all I have, your Honor.

THE COURT: Cross examination.

CROSS EXAMINATION

BY MR. KIMBALL:

Q Mr. Wortmar, can you look at the chart again and point out to us if you will the lines of the boundaries of the 600 foot channel near Con Hook Rock?

A The chart is so small, you will have to look closely.

I took the 35 foot contour which is the inner dotted line, the line furtherest from the east shore and measured to slightly up to the purple line that is marked -- you know, you can measure it here.

Q My question is, does the chart indicate the lines of the channel?

A No.

Q If as in this location the channel is wider than 600 feet, what is the Army's obligation with respect to the 32 foot depth?

A We are to maintain a channel 600 feet wide, 32 feet deep.

Q Beyond the 600 feet, it doesn't make any difference how deep it is?

A No, sir.

Q Do you know if the Army has received any recommendations that the rock at that location be destroyed?

A I believe there was an inquiry that came into Operations Division requesting removal of the rock.

Q Do you recall when that was?

A Not with any degree of certainty.

Q Do you recall if the request for recommendation came in the form of a written statement or was it orally communicated?

A I believe it was written.

Q Did you ever see the recommendation itself or was this something someone told you about?

A I don't recall reading it. It was discussed. I don't recall reading it myself.

Q Do you recall if the Army responded to the recommendation? Did it make a report in response or anything of that nature?

A The normal procedure would be to respond to it. I myself did not. At least I don't believe I did.

Q Do you know if a response was made by the Army?

A I believe there was a response.

Q Again, do you recall when the response would have been made, what year?

A No.

THE COURT: Give us your best recommendation, was it five years ago or ten years ago?

THE WITNESS: It wouldn't be that far back. I strongly believe it would be after an incident of a grounding.

THE COURT: Five years ago or less?

THE WITNESS: Maybe a little less.

THE COURT: Who did it come from?

THE WITNESS: I couldn't recall, your Honor.

THE COURT: Was it another governmental agency?

THE WITNESS: I don't believe so.

Q Do you know if the Coast Guard has ever made a recommendation to the Army that the rock be destroyed?

A I cannot swear to it.

THE COURT: If the Coast Guard made such a recommendation, would the Corp of Engineers consider it in light of the fact the channel was more than 600 feet wide at that point?

THE WITNESS: We would consider it if it was proved to be a definite hazard to navigation although the authorizing document doesn't call for this. Obviously if you are going to have one wreck after another, you have to consider the safety hazards involved.

THE COURT: Do you feel that the Corp of Engineers has authority to remove hazards to navigation which are adjacent to channels which are as wide as the statuory authority requires them to be?

THE WITNESS: That is getting into another area. We do remove wrecks from waterways outside of federal channels under another authorization.

THE COURT: You have several authorizations you can proceed under and it is possible you might find an authorization other than the one concerning the maintenance of the Hudson channel to do the work?

THE WITNESS: There is a possibility. Normally the authorization I am referring to refers to wrecks and obstructions. These could be in the form of underground snags or tree stumps or things like that go down and hang up in a river or somebody could sink a barge someplace and need to be taken out even though it is outside the channel, it could slide into the channel. We have removed them up on the bank to prevent them from sliding into channels.

Q Do you know who in the Army would have received the recommendations you have referred to, what person?

A Normally they come into our permanent branch, regulatory branch. They would investigate it to see if it is an obstruction or a hazard to navigation, then a recommendation goes forward on a case by case basis.

Q Would your office, the navigation branch, be asked to give input into the final recommendation that the Army might act upon?

A Yes, we would be consulted.

Q But as I understand, you have no specific recollection today of any of the recommendations we have talked about?

A No, sir, I do not.

MR. KIMBALL: That is all.

THE COURT: Does Pittston want to cross examine?

MR. BESHLIAN: No questions.

THE COURT: Let me ask you one question.

Has the Corp of Engineers received any requests or any communications from the Coast Guard about the possibility of depositing riprap at the Con Hook Rock site to assist the Coast Guard in the possible construction of a beacon in that area?

THE WITNESS: That could be possible, your Honor. I don't myself recall seeing any such thing.

Let me say again, as far as removal of obstructions go, we would still weigh this thing in light of available channel widths and depths and so on.

THE COURT: But you are not aware of any communications from the Coast Guard of any nature with respect to aids to navigation problems with that rock?

THE WITNESS: Not that I personally recall. My immediate chief may have handled it while I was working on something else.

THE COURT: Would it be something that would normally come to you if you were otherwise engaged?

THE WITNESS: Normally, yes, I would at least see it.

THE COURT: We will excuse the witness if there are no further questions.

(Witness excused)

MR. SCHULMEISTERS: If we may continue with Captain Hallock, sir.

MELVIN HALLOCK, having been previously sworn, resumed the stand and testified further as follows:

DIRECT EXAMINATION CONTINUED

BY MR. SCHULMEISTERS:

Q Captain, you recall that you testified earlier at a deposition and more particularly, on December 16, 1976?

A Yes.

Q At that point you are asked a question whether it was possible to put a sector light on Con Hook Island and I believe your response was yes, that it was possible.

Captain, my question to you now is, would it, in your opinion, be helpful to put a sector light on Con Hook Island?

A Yes, I think it would.

Q Do you think it is a practical solution? Do you think a sector light would help navigation in that area?

A Yes.

THE COURT: In which direction?

THE WITNESS: Upbound and possibly downbound.

Q Why has there been no sector light put in there, if you know?

A I couldn't answer that question.

Q Would you now consider putting a sector light there?

A Yes.

Q How much of a delineation would a sector light give you?

A A sector light, if you are speaking of a definite beam in the sense -- let me use for example, a different colored light than the one there at the present time, a sector of a different color, you would have a diffusion of the light along the borders of whatever sector we chose. However, the main thing would be that in the change of the color of the light, it would indicate a warning of some type to the mariner.

Q How much of a diffusion of light would there be?

A That would depend on the range from the light itself and to a certain degree, on the intensity of the light.

Q In navigating upbound, at what point would the sectors change -- let's assume they would be red and white --

MR. LOSQUADRO: Does that depend where the light is?

MR. SCHULMEISTERS: Just on the Con Hook Island.

THE COURT: If the Con Hook Island light were replaced with a sector light.

Q At what point would the mariner have any help with respect to the sector served?

A Depending on the size, the angle of that particular sector, what I am describing would be a sector that would project itself across the rock below Con Hook.

Q Where would the mariner have to be before he would start noticing the change, let's say from red to white?

A Again, it would be dependent on the angle of that particular circle, but it is conceivable when he passed Bear Mountain Bridge he might be in what we would call the danger sector of the light or the warning sector.

Q So he would be in the dangerous sector of that light all the way up until he reached Mystery Point?

A Yes.

Q Actually he would be in that sector when he was near the northern extremity of Mystery Point?

MR. LOSQUADRO: That is a leading question.

THE COURT: Moreover, it depends upon what part of the channel he is in.

Let's assume he stays within 300 feet of the east bank of the river. At what point northbound would he clear into the white sector?

THE WITNESS: I think the best way to describe it, would to insure we were clear of what is marked there as less than five fathoms, you would almost have to say while he is abeam of Mystery Point.

THE COURT: You are now pointing to a spot where a depth of 80 is marked on the chart.

THE WITNESS: The spot would be the shallow spot here alongside Mystery Point.

THE COURT: When he is abeam of that spot?

THE WITNESS: Yes. If you were to insure that the beam would change basically to a white light when he was in essence to a position eastward of this line, it would be at approximately this point here which is a shallow water point.

THE COURT: He wouldn't be there. Assume for the moment that the ship would like to navigate a line running along that pencil line which seems to be close to mid-channel. If he is following that line, where is he when he reaches the white? It looks to me like he is a little bit above the 80 mark.

THE WITNESS: Yes. It would intersect at this point.

THE COURT: That is fairly close to that buoy, isn't it?

THE WITNESS: Yes.

THE COURT: A sector light wouldn't become of any value until he was a couple of hundred yards of the rock?

THE WITNESS: The only advantage of the sector light, your Honor, all during the time the man was south of that particular rock, he would be well aware that he would want to favor the eastern side of the river.

THE COURT: I think that aspect of it is fairly clear and I think the testimony is clear that in good conditions and in good visibility the experienced navigator once he has gotten clear of Mystery Point, will tend to come over to the right-hand side of the channel and hug it.

The problem is, in bad visibility and with ice on the river, when they become uncertain as to where they are relative to Mystery Point, there seems to be something of a tendency to stray to the west side of the channel and if they don't pick up the buoy to run up on the rock and I don't think a sectorized light would be of much value because someone coming northbound under those conditions would not be alarmed at having picked up the white light because he would assume he hadn't picked it up because he was further south than he was, whereas, in fact, he is maybe 500 yards or 400 yards further north than he thinks he is and when he learns of his error, it is because of a bump.

Do you see what I mean?

THE WITNESS: Yes, it is not a sure fire answer to the problem but within what we have available today, that would be an additional warnings to the mariner; is the only point I am making.

Q Captain, would you take the pencil and draw an arrow to the area you just marked there with a letter K.

Captain, I believe we started getting into a subject last night of whether or not you have received any requests from Hudson River pilots to keep some buoys lit during the wintertime on the Hudson River.

Have you received such requests from Hudson River pilots?

A Yes.

Q Have you received such requests for buoy 25 which marks the rock south of Con Hook Island?

A No.

MR. KIMBALL: Objection. We went over this last Friday.

THE COURT: I think we did but I am not certain.

MR. SCHULMEISTERS: I wasn't sure.

Q Captain, we may have just touched upon it, but can you give us some examples of the costs that the Coast Guard has in attempting to lease land for the installation or maintenance of some aids to navigation?

MR. KIMBALL: Objection, unless he can be more specific.

THE COURT: It is a little too broad.

MR. SCHULMEISTERS: I would like some specific examples.

MR. KIMBALL: It is only relevant if we are talking about 1974 and again, it seems to me we have talked about this last Friday. My recollection is we went over all of this.

THE COURT: I know we touched on it with a couple of witnesses there are restrictions on obtaining lease-

MR. SCHULMEISTERS: I was trying to state it in general terms. I think we have one example here in Long Island Sound where the cost --

MR. LOSQUADRO: Objection. I think he is trying to put evidence on the record.

THE COURT: Yes.

Don't bother. You are arguing for the fact that easements are expensive to start off with and when they are renewed because of inflation they get more expensive. I accept that as a general proposition which anybody would know, but there is no need to bring in a few horrible examples to dramatize it for me.

However, while we are on the subject; assuming you can get an easement and assuming there are no environmental problems, and assuming you are not prohibited by law as being on park land, would not a single range light on Sugar Loaf Hill provide a valuable aid to navigation for that particular reason of the river?

THE WITNESS: It could do that, your Honor. We have not had particularly good experience with what we call a single station range light.

THE COURT: Why not?

THE WITNESS: We used to have the old tricolor light, red, white and gree, and again, due to diffusion -- that is really a 180 degree sectorized light and due to diffusion across those, depending on the length of the run we were attempting to make, we would find it subject to misinterpretation.

THE COURT: I was speaking more of a steering light, because the witnesses have all testified in good weather and when they can see it, the experienced tug captain comes around Anthony's Nose and he aims at Sugar Loaf Hill and stays on that heading until he picks up the Con Hook Light, then he bends around heading northward and if you do that, you stay off the Con Hook Rock or Coast Guard Rock as it is sometimes known.

So, assuming all the things I have given you, it would seem to me a steering light on Sugar Loaf Hill would be not only fairly cheap to set up and maintain but of considerable assistance in inclement weather conditions.

Of course, I realize if the weather is really inclement, you will not see the light on Sugar Loaf Hill, either.

MR. LOSQUADRO: Your Honor, that line of questioning which you just referred to, we also discussed about such a steering light or range much closer to the water than on the peak of Sugar Loaf Hill. I think you can bring it a mile closer.

THE COURT: We did. The advantage of putting it up higher is that tug boats could (a), pick it up better from a distance and (b), they wouldn't confuse it with the lights of those little villages and houses or the railroad light. It would be quite a significant light.

When you put something up at 770 feet, when you get a low ceiling, say less than that, you will not see it whereas you might see a lower light; but except for that condition, a light up there would be visible and distinguishable, whereas other lights might be a little more difficult to pick out.

In fact, it turned out in the interrogation of one Coast Guard witness, I think Captain Glass, that he was of the impression that there was already a light on top of that.

MR. LOSQUADRO: He did but he changed that.

THE COURT: He ultimately admitted he was wrong, that there was no light there.

MR. SCHULMEISTERS: Anyway, as far as this discussion goes, your Honor, I, of course, with all respect, may I point out Indian Towing, the Court has said --

THE COURT: Don't argue that with me.

MR. KIMBALL: There is substantial colloquy on this but the witness was never asked to participate.

THE COURT: Let's have your opinion on that.

THE WITNESS: A light could be constructed there.

THE COURT: That is what Captain Glass said, too. He said it wouldn't be too expensive if you could put one there.

Nobody has proved it is not part of a state park or something like that where you a[illegible]idden to put lights.

MR. SCHULMEISTERS: We, of course, submit there is no duty --

THE COURT: I know. Let's not go over that again.

MR. SCHULMEISTERS: It may be possible to put lights in various areas.

THE COURT: From the standpoint of legal liability, it might be a different subject.

Q There was some discussion about possibly adding a light next to the shoreline at Mystery Point. Would that be of any help in that area?

A I don't think it would be of substantial help.

Q Why not?

A It would not be provided for in guidance. In other words, he would not be able to use it as a range or steering light and I don't think it would provide him with other navigational information.

Q Captain, do Coast Guard vessels break ice in that

BY MR. SCHULMEISTERS (continuing)

Q Captain, have you discussed the question of whether or not ranges would be needed in this area with Hudson River pilots?

MR. KIMBALL: When and with whom?

MR. SCHULMEISTERS: Hudson River pilots.

THE COURT: You mean with the association?

MR. SCHULMEISTERS: Yes.

Let me withdraw that.

Q Has the question of ranges on the Hudson River been discussed with Hudson River pilots from time to time?

A Yes, they have.

Q Have the Hudson River pilots at any time requested that ranges be installed in the area of Con Hook Island?

A No.

MR. KIMBALL: Objection. The answer is important only if it relates back to 1974.

THE COURT: The question is have they ever done it and the answer is no, sir, is that correct?

THE WITNESS: Yes.

Q Captain, what is the purpose of an ice buoy?

A An ice buoy is to allow us to mark an obstruction to navigation and give us a reasonable reliability when ice is flowing in the vicinity of that obstruction.

Q How does an ice buoy work?

A Basically what we call an ice buoy is one of our unlighted buoys and presents a very small surface to the ice, thereby producing a minimum of pressure and preferably a smooth continuous surface, so the ice doesn't jam on the aid and carry it away.

Q It is designed for the ice to pass over it?

A Its design results in that, yes.

Q Captain, would you please turn to the aids folder, Exhibit 27, and would you please turn to the report with a Julian date 2201 and you have a Julian date calendar next to you.

A Julian date of 2201 would translate to the 19th of July, 1972.

Q Does that show the buoy as being off station?

MR. LOSQUADRO: Objection. I don't see the relevancy of those findings during the summer months.

THE COURT: I don't either.

MR. SCHULMEISTERS: Your Honor, in a deposition read in by Mr. Kimball, there were a number of situations and dates that were read by him that also did not deal necessarily in the wintertime and I think really what I am doing, I am taking the other parts of the deposition and going through those dates.

THE COURT: To rephrase the question, if you were to have the funds and the assistance of the Corp of Engineers to establish in-channel beacons, where would the Con Hook Rock stand in the order of priority of locations on the Hudson?

THE WITNESS: I don't know specifically, your Honor, except it certainly wouldn't be in the top five.

MR. SCHULMEISTERS: That is all the questions I have, your Honor.

CROSS EXAMINATION

BY MR. LOSQUADRO:

Q Captain Hallock, would you turn to the SANDS report for the Julian date 6021.

MR. SCHULMEISTERS: Your Honor, that is 1976. Certainly I object to it.

MR. LOSQUADRO: There is something in here I didn't catch before.

THE COURT: Let's see where it goes.

A I do not have 6021 in this folder.

Q I will show you a copy.

Would you look at the bottom of that report. Does that indicate a casualty at the rock marked by the 25 can buoy?

A It could indicate such.

MR. LOSQUADRO: But when that incident occurred, they went back and checked those and the result of that investigation was a recommendation to provide alternate means.

MR. SCHULMEISTERS: There was a draft, not a recommendation.

THE COURT: There is no proof the letter ever went forward.

MR. LOSQUADRO: Consideration.

MR. SCHULMEISTERS: The only accidents we do have is the Sauk --

MR. LOSQUADRO: Not the only accident that we do have. The ones that his Honor indicates as being significant.

THE COURT: Significant and within the preceding 20 years.

Q Captain, does the Coast Guard and Aids to Navigation monitor the adequacy of aids?

A Yes, we do.

Q Is the frequency of casualties at or near an aid a factor that is considered by the Coast Guard in monitoring the adequacy of the aid?

A Yes, it is.

Q The other locations on the river you indicated a priority for purposes of fixed aids to navigation at those sites. Do you know if they have the same casualty history as this rock we are concerned with today?

A By same, you mean quantity?

Q Quantity and severity.

A No, I do not know today.

MR. SCHULMEISTERS: Your Honor, within the last question as far as frequency was referred to by Mr. Losquadro, I believe for the record, the only thing could be included is the Tilton and the Sauk.

THE COURT: I don't understand what you are saying.

MR. SCHULMEISTERS: Since the Sassafrass was excluded and the two or three mentioned in 1920 or '30 have been excluded, the only ones that can be referred to was the Tilton --

THE COURT: You didn't listen to the question because the question didn't say as of February, 1974; it said as of now which takes into account three strandings during ice months of barges since the Ocean Prince or two since the Ocean Prince.

MR. SCHULMEISTERS: They, of course, can't be referred to.

THE COURT: Not for notice purposes but from the standpoint of danger purposes.

Q In view of the entire history, Captain, do you recognize a need for further assistance to the mariner going by Con Hook Rock, further assistance by way of aids to navigation?

A No, I don't believe -- if I understood the question correctly, there is need.

Q You indicated earlier you thought a red sector light would be helpful besides its limitations; that in view of the problems here, it would help?

A Yes, but I think your question was "necessary," and I don't think it is necessary.

Q Do you recognize that alternate or additional aids would be of assistance to the mariner going by there in view of the problems at that rock?

MR. SCHULMEISTERS: I will have to object to that question because our position no longer --

MR. LOSQUADRO: Your Honor, the witness has to answer the question.

THE COURT: Overruled.

He is asking you if money and priorities were not a problem, would there be any way of improving the aid to navigation system around buoy 25.

THE WITNESS: Yes, sir.

THE COURT: I don't know how he could avoid saying yes. It hurt but there was no other answer.

Put him on.

However, I caution you, this is his final farewell appearance. He doesn't come back again.

MR. SCHULMEISTERS: While Mr. Keenan testified, Mr. Kristiansen was in the courtroom.

WALTER KRISTIANSEN, having been previously sworn, resumed the stand and testified further as follows:

MR. SCHULMEISTERS: Your Honor, may I put in evidence the original deposition?

(Government's Exhibit CC received in evidence.)

REDIRECT EXAMINATION CONTINUED

BY MR. KIMBALL:

Q Mr. Kristiansen, in the normal course of operation, what documents are submitted by the tug captains to the office?

A There are two reports required each day. That is, the daily tug operating log and the daily tug payroll log.

Q When does the tug captain normally prepare these documents?

A On the day in which the events took place or the very next day.

Q I show you Exhibit 7 and ask is that a copy of the daily report submitted by the tug?

A That is correct.

Q This is in the normal course of operation completed and filled out by the captain, is that correct?

A That is correct.

Q I show you a document and ask if you can identify it.

A This is the daily tug payroll sheet.

Q Is this daily tug payroll sheet on a form which has been in use in Red Star for some time?

A Yes.

Q Was it in use in 1974?

A Yes, sir.

MR. KIMBALL: I would ask this be marked for identification as Exhibit 41.

xxx (Plaintiff's Exhibit 41 marked for identification.)

Q Does the tug captain prepare one copy of this or two?

A Two copies, sir.

Q What happens to the copies?

A The original is sent to our payroll department in Brooklyn and a carbon copy is sent to the main office at 500 Fifth Avenue.

Q For how long a period of time are these records maintained?

A Whatever the statute requires in terms of maintaining payroll records.

MR. KIMBALL: We offer it.

THE COURT: Can you tell on what date that document was prepared?

THE WITNESS: The date it was prepared -- I can tell the date it was submitted. It would have happened perhaps the day afterwards. It would be this day or the very next day.

THE COURT: It was prepared then either February 3rd or February 4th, correct?

THE WITNESS: 1974, correct.

MR. SCHULMEISTERS: I have an objection. Namely, Captain Kiernan testified that no paper work was getting done and that is why he filled it out. He did not fill it out as captain.

MR. BESHLIAN: Any information on there was put down after the accident.

THE COURT: I agree that I don't think --

MR. LOSQUADRO: Your Honor, I don't think there is any evidence to that effect. What was just suggested in that last objection is that Captain Kiernan was told what to put on that piece of paper and I don't think that was fair.

THE COURT: I haven't seen the document so I don't know what is on it, but Kiernan testified that following the grounding, he completed all the paper work in the next day or two even though he didn't consider himself captain because Reimer was so upset he wasn't in a mood to do such things and, two, he said none of the paper work was getting done so he did it.

MR. KIMBALL: We submit it because it shows Captain Kiernan put his own name in the slot reserved for captain.

MR. BESHLIAN: I submit again, your Honor, this is something that happened after the accident. At the time of the accident Captain Kiernan testified he did not know what position --

THE COURT: I remember the evidence quite clearly. I don't think this has an awful lot of evidentiary value. I will allow it in evidence, however, for whatever value it has.

MR. KIMBALL: We submit it has quite a bit of value in view of the fact Captain Kiernan both prepared the daily report and the daily payroll report which were duties of the captain and more importantly if he thought he was mate, he would have put his name in the slot reserved for mate, not for the slot reserved for captain.

xxx (Plaintiff's Exhibit 41 received in evidence.)

THE COURT: It has some value in that regard. I hadn't seen that before --

MR. BESHLIAN: Your Honor --

THE COURT: Listen to me. It isn't the fact he submitted it that is important because he explained why he submitted it. It is the fact in submitting it, he listed himself as the captain and he misspells Reimer as Rainer, which shows how poorly he knew him, he lists him as the mate.

MR. BESHLIAN: He has him as alternate captain.

THE COURT: You are right.

MR. BESHLIAN: Your Honor, again I submit this is after the accident, after some discussion at the office.

MR. LOSQUADRO: It is not after some discussion at the office.

THE COURT: There was no testimony from Mr. Kiernan on the date following the accident or even the day after it, he learned that he was supposed to be captain. Indeed, his testimony was to the contrary, that he filled out documents because Reimr was so upset and nothing was getting done.

MR. SCHULMEISTERS: There is testimony that he did contact the office, your Honor.

MR. LOSQUADRO: About the incident.

accurately reflect the policies of the company?

THE WITNESS: Yes, in most cases.

THE COURT: You will recall there was one case in which he acknowledged he didn't know how they would go about it, namely where someone was put aboard the vessel not as captain, then somebody else came aboard and the captain left, how it would be designated which of the two on board would be captain and he said he wasn't certain.

THE WITNESS: That is because that would never happen. Arrangements would be made in advance between the personnel department and the men on the boats. However, should it happen, the personnel department would advise the dispatcher. The dispatcher would radio, telephone that information to the boat.

MR. SCHULMEISTERS: I object. I think the personnel department should explain or should have been brought to explain, not him saying what the personnel department probably would be doing in talking to someone else.

THE COURT: Overruled.

In this particular instance, the evidence shows when Kiernan went on board he did not become the captain, that whoever was on there then signed as captain the first day Kiernan was on board.

THE WITNESS: That is right.

THE COURT: Then Reimer came back from his vacation, not a new assignment but just coming back on board after his vacation to his regular boat.

Do you have any evidence or any knowledge to indicate that Kiernan was advised that when Kronin left and Reimer came aboard, he was to be the captain?

THE WITNESS: Specific evidence that so and so talked to so and so at such and such a time, no, sir.

MR. BESHLIAN: I think that is the answer, your Honor.

THE COURT: Within the company procedures, whose function would it have been to convey such information and at what point should that information have been conveyed?

THE WITNESS: The personnel department's responsibility and it is conveyed immediately upon the decision being made, or immediately upon being able to reach a vessel should they be outside of radio telephone range.

THE COURT: Does the company's policies get altered any by the fact that Kiernan was not a company employee but was on loan from a sister corporation for a short period of time?

THE WITNESS: No, sir, it does not.

THE COURT: Do you know if when Kiernan went aboard on the first, the personnel department was aware and foresaw the fact that Kronin would leave on the 2nd and Reimer would arrive?

THE WITNESS: I can't say beyond a shadow of a doubt, but I certainly would assume --

MR. BESHLIAN: I don't think we can assume anything.

THE COURT: Let him answer, then maybe we will strike it.

THE WITNESS: I certainly would assume that had been scheduled out and planned because the men have to make known their requirements for reliefs while the personnel department, in fact, is there because they arrange reliefs, not the dispatchers.

THE COURT: Now we can't accept your assumption in this regard --

MR. SCHULMEISTERS: Motion to strike.

THE COURT: Stricken.

Whose responsibility would it have been within Red Star to see to such a thing?

THE WITNESS: The personnel manager.

THE COURT: Who was the personnel manager in 1974?

THE WITNESS: Mr. George Rainer?

THE COURT: Like the name is misspelled in the report?

If it is his assumption as to what was to happen, it remains an assumption no matter which way you ask the question.

MR. LOSQUADRO: Your Honor, he was testifying as to a policy but let's correct the record and clear the record once and for all by a question put to him.

THE COURT: Yes.

Q What is the company policy with respect to informing pilothouse personnel who have been assigned as relief personnel that they are to assume the responsibilities of any given position?

A It is the responsibility of the personnel department to make known that fact to the individuals involved.

Q How is that done?

A Either by the personnel department through VHF transmissions or telephone calls or, depending upon the time of day, they can pass the message to the individuals involved via the dispatcher on duty.

Q Is it expected by Red Star that the pilothouse personnel will discuss among themselves their respective duties and responsibility?

MR. SCHULMEISTERS: Objection.

MR. BESHLIAN: Objection.

THE COURT: We have been through this before. Sustained.

What happened to the payroll record?

MR. KIMBALL: It is right here, your Honor.

That is all.

THE WITNESS: There is something that might cause your Honor to be confused regarding the names in exactly the positions and I thought I could assist.

THE COURT: Go ahead.

THE WITNESS: Captain and alternate captain. There is really no difference in pay. What happens is, we use this on a three-crew vessel when for some reason we have to work two weeks on and one week off and while it would be normally the captain and alternate captain on together. The individual who is supposed to be senior fills in this line ten marked "Captain." The one who is junior on the boat is the alternate captain. The rates of pay are the same, the captain is the senior position.

THE COURT: Is the designation of Reimer here misnamed as Rainer as an alternate captain accurate as of that time?

THE WITNESS: As an alternate captain as far as we are concerned, yes, sir, that is accurate.

THE COURT: Why is it accurate? Because he becomes the captain after Kiernan leaves?

THE WITNESS: It depends on the individual that relieved Kiernan.

I was asked to take and research in my deposition who, in fact, were captains of the tug Ocean Prince in the month of February. Captain Reimer, Mr. Reimer, his names does not appear anywhere as captain for the month of February, 1974.

THE COURT: Had he been captain previously?

THE WITNESS: Yes, sir.

THE COURT: Once he was serving down south?

THE WITNESS: Yes, sir.

There was Mr. Kiernan, Mr. Redman, all went up into the captain spot.

THE COURT: Under your personnel policies, if you were to put a makeshift crew aboard a tug and both deck officers were qualified to be captain and they were only staying on for a short period so only one of them would ever be captain of that particular tug, would the one who was not captain be paid as an alternate captain even though he was never going to alternate as captain or would he be paid as a mate?

THE WITNESS: He frequently gets paid as alternate captain.

THE COURT: And that is the same pay as a captain gets?

THE WITNESS: Yes, sir.

THE COURT: And I take it this is to lessen hard feelings over who gets the designation as captain when you have two qualified men on board?

THE WITNESS: Exactly right. There is no difference in pay.

THE COURT: Did you hear the testimony or the argument about the testimony where the record would appear to indicate that both Kiernan and Reimer slept in the captain's cabin?

THE WITNESS: It is impossible.

THE COURT: It doesn't happen?

THE WITNESS: No, absolutely not.

THE COURT: When there is an alternate captain aboard, he sleeps down in the deckhouse?

THE WITNESS: That is correct. The senior man sleeps directly behind the pilothouse.

THE COURT: Anything further?

MR. KIMBALL: No.

THE COURT: Have you had a chance to go over the deposition?

MR. LOSQUADRO: Up to page 20; I have been listening to the testimony.

THE COURT: Are there any live witnesses after this

Q When he returned to the Ocean Prince and the Ocean Prince was designated as the vessel to tow the barge New London to Kingston, New York, did the company at that time take into consideration Mr. Reimer's lack of experience for the local waters?

A I believe Mr. Keenan testified to that this morning.

Q I am asking you, did the company take that into consideration?

A Yes.

THE COURT: As I understand it, the assignment of personnel to the vessels and the designation of line of command is a personnel department function, but the selection of the tug to be sent on a particular assignment is the dispatcher's function?

THE WITNESS: That is correct.

Q Does the company, and by that I mean management personnel of Red Star, know the problems to be encountered in navigating a vessel in the Hudson River in the wintertime when you are apt to meet ice conditions and a diminished visibility condition, the type of a situation which Mr. Reimer faced when he was navigating the vessel?

MR. KIMBALL: Objection.

THE COURT: Overruled.

A We have persons employed in the management of Red Star. I would dare to say most people who are employed in the management of Red Star have served aboard tug boats in the Hudson River during ice conditions.

Q By that do I assume you are saying yes, they would know these conditions exist?

A Yes.

Q Was Mr. Reimer's lack of experience in this type of a condition conveyed to anybody by management when he returned to the vessel?

MR. KIMBALL: Objection. Mr. Beshlian is using the word "management" without being very precise.

Q By you, Mr. Kristiansen.

A I didn't know the Ocean Prince first of all was going to be sent up the Hudson River and I testified to that earlier, but I did not take and point out to any people who are subordinate to me specifically that Captain Reimer lacked experience in the Hudson River, no.

Q When you leave it to the dispatcher to select the tug to be used on various towing jobs, shouldn't he be advised of the experience of the men on board so he can make a value judgment?

MR. KIMBALL: Objection.

THE COURT: That is argumentative. Sustained.

THE COURT: That means he was gone almost three months.

THE WITNESS: That was a prolonged period of time. That is a vacation. He was on vacation and it would appear he went on vacation just about the time the vessel came north.

THE WITNESS· It would appear so.

THE COURT: Did the personnel department make an assignment of a permanent captain to that vessel after it was moved north and, if so, who was it?

THE WITNESS: I don't believe that they did. I believe they were filling in during the vacation time with available personnel.

I base that on my review of records that I was asked to do and the number of names that I got for people who were assigned to act as captain during about a two-month period of time.

THE COURT: Forgetting the incident that occurred, if there had been no grounding, would there have come a point when Reimer would have been assigned as captain to that tug and, if so, when?

THE WITNESS: He did come back and eventually serve as captain, with a mate under him, with him specifically a captain. I don't know unless I went back into the payroll records again exactly what the date was. He performed for a considerable period of time after the incident on the boat as captain and did a good job.

THE COURT: My question was, when did he first start serving as captain, after this incident.

THE WITNESS: I don't know, I would have to look in the payroll records.

THE COURT: Do you think it was a month or two later or longer than that?

THE WITNESS: I wouldn't hazard a guess.

THE COURT: Of course, by March or April the ice in the river starts to melt and it is no longer a consideration.

THE WITNESS: Some years. This year it went until May.

THE COURT: This was a bad year.

BY MR. BESHLIAN:

Q Mr. Kristiansen, do you know if anyone advised Mr. Kiernan about the lack of experience that Mr. Reimer had in the Hudson River?

A If anyone?

Q Anyone in your company, either dispatcher or from personnel?

A I don't know if a dispatcher or anyone from personnel

Advised Captain Kiernan of the lack of experience in the Hudson River of Captain Reimer.

Q Referring to the conditions that we agreed exist in the Hudson River in the wintertime with ice in the water and difficulty in navigating because of minimal visibility; do you believe a navigator or steerer in the Hudson River should have local knowledge of the conditions that he is going to meet?

MR. KIMBALL: We have gone over this the first time around.

THE COURT: We have, but I think he is framing it a little differently.

MR. LOSQUADRO: May we have the question read back?

(Record read)

MR. LOSQUADRO: I will object to the use of minimal visibility.

MR. BESHLIAN: Visibility of two miles.

THE COURT: All right, visibility of two miles.

A Of course it always helps to have your officer of the deck have as much local knowledge as possible.

Q Would you say he needs this local knowledge to steer, to navigate?

A Does he need it, no, he doesn't need it. It helps.

things he testified to when he was here, which Mr. Schulmeisters just wants to read to remind me of.

MR. LOSQUADRO: I suspect, your Honor --

THE COURT: But until I hear that, I can't tell. But to the extent it covers anything new, it will be admissible in rebuttal of your reopened case.

MR. SCHULMEISTERS: On Page 4. Question starting with Line 7:

"Question: Please state your name.

"Answer: John Kiernan.

"Question: Where do you reside?

"Answer: 105 Beachwood Road, Melford, New York.

"Question: By whom are you employed?

"Answer: Spentonbush.

"Question: Who was the senior man on that trip?

"Answer: Being that this man had been on the boat, I had assumed that he was the senior man.

"Mr. Losquadro: That is a tough one to answer."

MR. SCHULMEISTERS: I was under the understanding --

THE COURT: You can omit the colloquy.

That's not in evidence.

MR. LOSQUADRO: So far, it's duplicative, your Honor.

MR. SCHULMEISTERS: Let me go on to Page 10, Line 17:

"Question: By looking at the log book, can you tell me on what date you joined the Ocean Prince?

"Answer: Yes, sir.

"Question: Will you please do that?

"Mr. Losquadro: The Captain is pointing to the entries for the date Friday, February 11, 1974, and he said -- Will you say what you just said to me is the day you joined her?

"The Witness: That's right."

On Page 11:

"Question: But that is the man you relieved?

"Answer: No, sir. He was the captain when I came aboard. It was another mate that got off and they called me to take this mate's place."

That's all, except, your Honor, on Page 26 and 27, there is how he came to draw that diagram.

THE COURT: Don't bother with that.

MR. LOSQUADRO: I move to strike all of

Deposition of WALTER K. KRISTIANSEN, taken by Third-Party Defendant and Plaintiff, pursuant to Notice, at the offices of the Admiralty & Shipping Section, Department of Justice, 26 Federal Plaza, New York, New York, on Wednesday, December 22, 1976, at 2:30 o'clock in the afternoon, before Betty Jane Mahoney, a Notary Public within and for the State of New York.

* * *

Appearances:

HEALY & BAILLIE, ESQS.
Attorneys for Plaintiffs and Third-Party Plaintiffs
29 Broadway
New York, New York

By: JOHN D. KIMBALL, ESQ.,
of Counsel

McHUGH, HECKMAN, SMITH & LEONARD, ESQS.
Attorneys for Defendant Pittston Marine Transport Corporation
80 Pine Street
New York, New York 10005

By: MAURICE F. BESHLIAN, ESQ.,
of Counsel

Q Who is the president of Red Star Towing & Transportation Company?

MR. KIMBALL: Do you know?

A I believe it is Robert W. Sanders.

Q Was he also the president in 1974?

A Yes.

Q Does Mr. Sanders hold any office in Red Star Marine Services?

A Yes, he is the President.

Q Mr. Sanders is the President of both corporations?

A That's correct.

Q How many employees are there, if you know, in Red Star Towing & Transportation Company?

A All afloat employees are employed by Red Star Towing & Transportation Company, and I would estimate that number to be approximately 110.

Q But these employees are actually hired by Red Star Marine Services?

A Correct.

Q But the payroll is that of Red Star Towing & Transportation Company?

A Correct.

Q And Red Star Towing & Transportation has

(Discussion off the record.)

BY MR. SCHULMEISTERS:

Q Who is the man in charge of operations?

MR. KIMBALL: For what company.

Q Let us first start with Red Star Marine Services.

A I am.

Q You have been in charge of operations since August of 1973?

A That's correct.

Q With respect to hiring, you mentioned that Operations dealt in conjunction with the Personnel Department; is that correct?

A That's correct.

Q Who is in charge of the Personnel Department now in Red Star Marine Services?

A Mr. James Caffentzis.

Q Was Mr. Caffentzis also in charge of personnel back in February of 1974?

A I'm not sure.

Q Who was in charge of personnel before Mr. Caffentzis took the job?

A Mr. George Rainer.

Q Where is Mr. Rainer now?

They would also consider the general knowledge that they would have of the abilities of the crew members aboard that vessel.

After weighing all of these factors, a tug would be selected -- if there is a choice -- a tug would be selected to tow the unit.

Q When you said now that one of the factors was the general knowledge of the abilities of the crew that they would have, by "they" I presume you are referring to the dispatcher?

A That's correct.

Q And in this case, it would have been Mr. Philip Keenan, right?

A That's correct.

Q What records does the dispatcher's office keep showing what are the qualifications or the knowledge of the personnel on board a tugboat at any given time?

A They keep no records regarding qualifications or licensing. This is knowledge that is gained by working with the pilothouse personnel, understanding who is more efficient, who is more capable, from their points of view, to accomplish the work.

Q So this basically based on prior dealings with the particular individual?

A That's correct.

Q Now, the contacts that the dispatchers have with the personnel aboard the tugboat, how are they made?

A Through the VHF radio.

Q So the dispatcher would talk to a particular individual over the VHF radio on the tug?

A That's correct.

Q By the way, has Mr. Keenan been employed in the New York office for the last five years, say?

A I believe it is four years, approximately four years.

Q And that would be between February of 1974 and 1976?

MR. KIMBALL: I don't understand the question.

Q In February of 1974, how long had Mr. Keenan been employed as a dispatcher?

A It would be approximately two years.

Q And during those two years, had he been employed in the New York office?

A That's correct.

Q Do you also have an office down in Florida?

A We do not.

Q Are there any dispatchers down in Florida?

A There are not.

Q In 1973-1974, did some of the Red Star tugs operate in Florida waters and in the Caribbean?

A They did.

Q And from where did they receive their information?

A New York.

Q Does the New York VHF reach the tugboats in Florida waters?

A No, it doesn't. At that time, we were using single side-band radio,which does reach that far.

Q So all the dispatcher conversations were still coming from New York even though the tug may have been operating down South?

A That is correct.

Q And that is how Mr. Keenan got to know the personnel aboard the OCEAN PRINCE?

A That's correct.

Q Does Red Star Marine Services keep any records as to a man's experience, and I am referring now to the captains or mates of the tugboats.

A Yes.

Q And what kind of records do they keep?

A Each individual has a personnel record which includes basic employment information.

Q What is this basic employment information that it includes?

A Name, Social Security number, address, next of kin to be notified in case of emergency, other Coast Guard endorsements that they might have, licensing, payroll items and employment prior to coming with the company, any records we might come up with on that.

Q Is this information available to a dispatcher?

A It is not.

Q Who keeps custody of this information?

A The Personnel Department.

Q You mentioned that in connection with hiring an individual for a particular tugboat, it was done by a cooperation between the Operations and the Personnel Department; is that correct?

A That's correct.

Q Is this personal information card, then, available to the Operations Department?

A To certain individuals in the Operations Department.

Q Would you be one of those individuals to whom it is available?

A I would.

Q But it would not have been available to any of the dispatchers?

A Not as a matter of routine.

Q Who else in the Operations Department had access to this information besides you?

A It is not so much a question of access as reviewing it when an individual is initially hired. That would also include Captain McKinley Koch, who is the Operations Manager.

Q Now, is this information referred to in situations when a tugboat is sent on a particular trip?

A Not as a matter of routine.

Q Do you know, was it reviewed in this case when the OCEAN PRINCE was sent on a trip to take the NEW LONDON from Constable Hook to Kingston?

A You are asking, do I know that? I don't know for sure.

Q Considering, also, your testimony that Mr. Keenan would not have had access to it, is it reasonable to say that such information was not reviewed?

A It would be reasonable to say that, yes.

Q Have you had occasion to check out where the OCEAN PRINCE operated previous to this particular page 75 --

MR. KIMBALL: For the benefit of the record and not Mr. Kimball's benefit.

MR. SCHULMEISTERS: -- from page 75 of the deposition of Mr. Reimer:

"QUESTION: Had you ever, prior to the trip, navigated as the mate in charge of, or the captain of, a tugboat up the Hudson River?

"ANSWER: No."

If you are satisfied, Mr. Kimball --

BY MR. SCHULMEISTERS:

Q Considering this information, let me now rephrase the question.

Was it the usual practice in February of 1974 for Red Star to send a tug to tow an oil barge, a barge carrying oil, up the Hudson River where one of the navigators had never previously served on the Hudson River?

MR. KIMBALL: Do you understand the question?

(The reporter read back the last question.)

A It was not the usual practice.

Q But it did occur occasionally?

A Yes.

Q ould this have been one of the factors

A He would not have known what the licensing was; he wouldn't be concerned because at the time, there was no licensing requirement.

Q How about the individual who asked Mr. Kiernan to serve on the tugboat on that voyage, would he have known if Mr. Kiernan had any license?

A I don't know who the person is. I don't know.

Q Let me ask you this. Mr. Reimer's testimony shows that the voyage in question from Constable Hook to Kingston was the first voyage in which he was on the Hudson River in the capacity of a navigator.

Was that the usual procedure?

MR. KIMBALL: I object to the question and I would like Mr. Schulmeisters to show us where on the record it shows that. The Hudson River is a rather large river.

MR. SCHULMEISTERS: Mr. Kimball, I think you were present at that deposition.

MR. KIMBALL: I object to your drawing conclusions from previous depositions.

MR. SCHULMEISTERS: Let's take a break for a minute.

(Discussion off the record.)

IULMEISTERS: Let me read you from

Kingston.

Q -- and he had never before that been on board the tug OCEAN PRINCE.

MR. KIMBALL: Where does it say that?

MR. SCHULMEISTERS: On page 14 this question was asked:

"QUESTION: Had you been on the OCEAN PRINCE prior to joining her on February 1st?

"ANSWER: No, sir."

MR. KIMBALL: Thank you.

BY MR. SCHULMEISTERS:

Q Now, with this information, let me rephrase the question.

How did Mr. Kiernan come to be hired to work on the OCEAN PRINCE for this voyage?

A I don't know. I didn't hire him.

Q Do you know whether Mr. Kiernan had any license at the time he served on the OCEAN PRINCE on this voyage?

A I don't know.

Q Would it have been usual for the dispatcher to have known whether or not Mr. Kiernan had any license?

A Had any license? No.

Q The dispatcher would not have known that?

that your dispatcher, Mr. Keenan, would have taken into consideration in assigning the OCEAN PRINCE on this voyage?

A It would.

Q Would it have been a good idea for Mr. Keenan to have inquired with respect to this particular experience of Mr. Reimer when directing that tug to go there?

A You are asking me to make a decision after certain facts are known.

Q You are the Vice President of Operations, are you not?

A I am.

Q And you were at that time?

A I was.

Q Can you please answer that question?

(The reporter read back the pending question.)

MR. KIMBALL: I object to the question. I don't believe the witness is intimately acquainted with what Mr. Keenan may or may not have done on that date with respect to making inquiries or dispatching the vessel.

MR. SCHULMEISTERS: The question is, would it ood idea for Mr. Keenan to have done so.

MR. KIMBALL: You are asking the witness to draw a conclusion which could be a legal conclusion.

Q Is this within the practice of Red Star Marine Services and Red Star Towing & Transportation? Can you please answer that question?

MR. KIMBALL: Do you think you can answer the question?

A It would certainly have been prudent for Mr. Keenan to take into consideration the relative experience of the total pilothouse, but to specifically inquire prior to the voyage regarding what the men felt their abilities to be would be a judgment that Mr. Keenan is authorized to make.

Q And I guess Mr. Keenan was authorized to make this judgment in his capacity as a dispatcher?

A He was.

Q And as a dispatcher within the Operations Department?

A That's correct.

Q And this is authority that you as vice president concurred that he has?

A That's correct.

Q And do you know, do dispatchers make such in [illegible] ular course?

trip?

"ANSWER: Being that this man had been on the boat, I had assumed that he was the senior man."

MR. KIMBALL: I object to your taking testimony out of context. I think he also said something about being "senior man at the time of your watch."

MR. SCHULMEISTERS: Is your objection that both men are equally senior when they are on the watch, when they stand their own assigned watch?

MR. KIMBALL: Well, I am not going to answer questions on the record but you may infer what you want from my objection.

BY MR. SCHULMEISTERS:

Q I just read to you a question and answer from Mr. Kiernan's deposition. Does that strike you as unusual, Mr. Kristiansen?

A It still surprises me that Captain Kiernan said that he felt that he was the mate.

Q Would that indicate that no one in Personnel told him that he was the captain of the boat?

A I don't know what that would indicate.

Q Do you have any standing instructions for you [illegible] inquire into the experience of the captain and/or the mate of each tug before they assign them to a particular job?

A We do not.

Q Have you ever given any verbal instructions of this nature to any of your dispatchers?

A No.

Q Who else in the company aside from you would be in a position to give such instructions to the dispatchers?

A No one.

Q Should Mr. Kiernan have been aware of the fact that Mr. Reimer's experience for approximately a year and a half prior to this voyage while he was working for Red Star was down South?

A He should have.

Q How would he know?

A Simply by talking to the man when he came aboard, the usual exchanges that occur on a tug when new people come aboard.

Q What are the usual exchanges that occur when a new man comes on board the tug?

A Generally, they will be briefed on the characteristics of the boat, any machinery problems that might be incurred at the time, the status of supplies, fuel, What relationship, if any, does Mr. Bushey have to Red Star Marine Services?

A Mr. Bushey is a principal.

Q What do you mean by a "principal"?

A An owner.

Q What is Mr. Bushey's relationship, if any, to Red Star Towing?

A Mr. Bushey is a principal.

Q Again, an owner?

A An owner.

Q Earlier when you mentioned that when repairs are made they are done in a Bushey yard -- it may have been off the record -- but is that the yard that is in Brooklyn, New York?

A That's correct.

Q So the various Bushey companies that are known around the New York Harbor area and Red Star that we have been talking about are related companies?

A They are.

Q And the dispatchers that you mentioned, Mr. Keenan, Mr. Small, Mr. Fitch, Mr. Alexander and Mr. Dean, actually act as dispatchers for these various companies?

A No.

work, we might take and review his record and speak to the individuals who are assigned on the tug with him and get an evaluation in that manner.

Q Is it safe to assume that absent any particular problems with the individual, he never would be brought in and interrogated or anything to do with him?

A That's correct.

Q Would the dispatcher -- and, again, I have to refer back to answers that you gave to questions proposed -- you said that the dispatcher would obtain information about the individuals as the result of his contacts with him over a period of time.

Would this knowledge be disseminated amongst various dispatchers so that each of them would have some idea as to what the man's capabilities or proficiencies are or were?

A Yes, plus each -- again, since there is almost continuous talks with most boats -- they gain their own knowledge.

Q Would it be common knowledge to most of the dispatchers that the OCEAN PRINCE during the time of employment by Mr. Reimer as either a master or captain aboard the vessel, was primarily engaged in the southern waters, does that become knowledge of the dispatchers?

A They would know that because the tug would have been operating out of town for a long period of time.

Q And this would have been [illegible] assigned ? by the dispatcher who assigned the NEW LONDON in February?

A Probably.

Q Would you know who or what individuals comprised the crew of the OCEAN PRINCE on February 3rd, do you have a crew list?

A I don't have one with me.

Q Would there be a crew list showing the men who made up the crew?

A There may be a crew list.

MR. KIMBALL: Let me note that I believe the information has been supplied. If it has, you should have received a copy of that information sometime ago.

MR. BESHLIAN: I will check and if I haven't got it, I will ask for it.

MR. KIMBALL: Right.

Q Now, as I understand it, the Red Star Marine Services is exactly what the title would indicate, a the captain's and the mate's duties to keep the light lists and charts and other information up to date; is that correct?

A I don't assume it.

Q It is their duty, right?

A Yes.

Q How often do you go on checks to tugs to see that they have done it?

A I don't.

Q Does anybody in your company do that?

A No.

Q Also, you mentioned that you expect the prior master or mate to familiarize the new man with the particulars of a tugboat and the barge, or whatever job they are to perform, or did I misunderstand you?

A That's correct in terms of a relief, but a new individual coming aboard to be briefed by the individual who, of course, remains aboard.

Q Do you ever go down and participate in these briefings?

A No.

Q Does anybody else in the office go down and participate in the briefings?

A No.

Q So as to the extent of the actual briefing, this is between the two men that are actually talking, the two tug people?

A Correct.

Q And you don't actually have any knowledge as to what information they do pass to each other?

A Other than the information that I had when I worked aboard the tugs.

Q You worked aboard the tugs when?

A 1959.

Q And in what capacity?

A A deckhand.

Q But you did not work as a master, as a mate?

A I did not.

Q So your personal knowledge is limited as to what the deckhands would be passing back and forth?

A Correct.

Q Does anybody from the company go down and check as to what information is in fact passing from one man to another?

A I answered that earlier, no.

Q Do you have any check-off lists that the company supplies the masters as to what information is to be passed along?

DEPOSITION OF WALTER REIMER (EXHIBIT 5).

BBjw

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

--x

In the Matter of the :

Complaint of Tug Ocean Prince, Inc., and Red Star Towing & Transportation Company, Plaintiffs, as Owner and Charterer of the Tug "OCEAN PRINCE" for Exoneration from or Limitation of Liability

74 Civ. 3358
(Weinfeld)

--x

May 6, 1975
1:30 P.M.

Deposition of Red Star Towing & Transportation Company, By: Walter Reimer, taken by Defendant, pursuant to Notice dated February 5, 1975, at the offices of McHugh, Heckman, Smith & Leonard, Esqs., 80 Pine Street, New York, New York, before Barbara Boehm, a Shorthand Reporter and Notary Public of the State of New York.

o0o

within deposition to counsel for plaintiffs, without cost.

oOo

WALTER REIMER, called as a witness, being first duly sworn, was examined and testified as follows:

EXAMINATION BY MR. KESHLIAN:

Q For the record, what is your name, sir?

A Walter E. Reimer.

Q And where do you live, Mr. Reimer?

A Jacksonville. 283 Baisden Road, Jacksonville, Florida.

Q And for how long have you lived at that address?

A Oh, eight years.

Q And what is your date of birth, sir?

A The twelfth month, the 23rd day of '29.

Q By whom are you employed presently?

A Caribe Tugboat Corporation out of Jacksonville, Florida.

all of your service was on the OCEAN PRINCE?

A Yes.

Q What was your job classification on the OCEAN PRINCE?

A Well, I was mate and captain and relief captain.

Q Now, on February 3rd or February 2nd -- let's start with the February 2nd.

Are you familiar with the voyage that left I think it was Bayonne, New Jersey? You were bound to Kingston, New York, with the barge New London.

A It's Conn Hook.

Q You're basically familiar? You remember that voyage?

A Yes.

Q What watch did you stand?

A I had the 12:00 to 6:00 watch.

MR. LOS QUADRO: Midnight 12:00? Midnight to 6:00 a.m. in the morning?

THE WITNESS: Yes.

Q And how many men were in the crew with you at that time?

A Well, we had six.

Q Christmas of 1973?

A Yes.

Q And then when you joined the vessel, you say the day before this voyage started, was that the first time you were back on her after leaving it in Philadelphia?

A Yes, that's right. I had about a month off.

Q Now, had you ever worked in the metropolitan area before?

A Yes, I was up here before.

Q Could you tell me what waters and for whom you worked at the time?

A Well, I was up here on one, the Crusader. We worked up here for, oh, a few weeks around the New York harbor and what they call down east, Providence and Boston and things of that nature.

Q This was prior?

A This was before I got on the OCEAN PRINCE.

Q This was for a few weeks?

A Yes.

Q Two weeks?

A Three weeks.

Q During any of that time did you take any trips through the Hudson River?

A No, I didn't.

Q Had you ever prior to February of 1974 navigated a vessel through the Hudson River?

A I've been up there many times, yes.

Q Could you tell me for whom you were working at the time?

A We went up there quite a few times with Poling Brothers.

Q Was that a tugboat at the time?

A No, it was one of those small tankers .

Q Do you remember what tanker it was?

A I believe the Chester A. Poling was one of the last ones.

Q Was that the only time you had navigated in the Hudson River, when you were working for Poling Brothers?

A Yes. The time I was up there I went up there on the deepsea ships.

Q You didn't have anything to do with the navigation of the vessel?

A No.

Q Am I correct you worked for Poling

Brothers about six years prior to the time you worked for Red Star?

A Oh, no, no, no. Oh, yes, that's right.

Q So that your last experience in the Hudson River would have been about six years prior to the voyage that you made in February of '74?

A Probably would have been something like that.

Q Could you tell me something about the tug OCEAN PRINCE, you know, various specifications, length, beam?

A She is about 96 feet long. I don't even know what the beam of it is. It is 1800 horsepower.

Q Do you know how much she draws?

A She was drawing at the time 14, 15 feet deep draft. In other words that's how much.

Q What kind of engines does she have?

A A Fairbank Morse, opposite pistons.

Q Is it single screw?

A Yes.

Q Pilothouse control?

A Yes.

Q Was the tug equipped with radar?

Q The tanker men, are they employed by Red Star?

A No, they were Pittston.

Q Their functions relate to the duties on the barge, is that correct?

A Right.

Q Do they have any duties with respect to navigating of the unit?

A No.

Q None at all?

A No.

Q Do you know what time you left Jersey?

MR. BESHLIAN: Mr. LosQuadro has presented me with towing sheets, am I correct?

MR. LOS QUADRO: I believe, Mr. Beshlian, they are called the daily tug reports or daily log reports, I believe, and perhaps the witness can help us with this. They are the daily sheets prepared and sent to the office.

Q Can you identify these?

A Yes.

Q Is your handwriting on any of these sheets?

A This is the smooth copy that goes into you came on watch?

A Well, in the log here?

Q Yes, in the log.

A No.

Q Do you recall where the tow was when you came on watch?

A I suspect it was around by Haverstraw there, I imagine someplace. I wouldn't recall for sure.

MR. LOS QUADRO: Haverstraw, New York?

THE WITNESS: Yes.

Q You were bound to Kingston, New York.

A That's right.

Q And do you recall the weather conditions when you came on watch?

A Yes, it was kind of a snow flurries here and there. It wasn't too bad.

Q Do you recall the visibility?

A Yes. Well, I'd say when I came on we had pretty fair visibility, yes.

Q Mile, two miles?

A Yes, mile and a half, mile, something like that.

Q How about the tide? What was the condition of the tide at that time?

A It was ebb.

Q It was ebbing?

A Yes.

Q Do you know the speed of the ebb tide?

A No, I don't.

Q How about the conditions of your engines? Could you tell me the RPM that you would have been making?

A If I remember correctly, I think that boat turned about 750 RPM.

Q That is when it was hooked up?

A Right.

Q Would you have been running hooked up at that time?

A When I first went on watch?

Q Yes.

A When I first went on it did, yes.

MR. LOS QUADRO: Let the record show that as far as I know "hooked up" means full ahead.

Q And about what speed would that give you through the water?

A I would say it should be about six,

seven knots, I imagine.

Q You have no idea what you were making over the ground, do you?

A I imagine we were making six over ground. She was pushing pretty good.

Q Did you pass any tows either upbound or downbound during that time?

A No.

Q After you came on watch?

A No.

Q At no time between the time you came on watch and the time of the casualty?

A No.

Q Do you have any charts on that tug?

A Oh, yes.

Q Were you using the charts?

A Yes.

Q What chart were you using?

A The Hudson River chart.

Q I have a new one here. Would this be one of the charts you might have been using, Captain?

A Yes, this is.

MR. BESHLIAN: For the record then, we have USCG Chart 282.

Q How about the tow? Did you encounter any problems with the tow other than the casualty?

A No.

Q Everything seemed to be made up in proper fashion.

A Fine.

Q And did you have a lookout posted when you were going through the water?

A No, we didn't have one.

Q What was your deck hand doing when you came on watch at Havestraw?

A He was up in the wheelhouse with me.

Q And did he remain -- go ahead.

A He was in the wheelhouse with me.

Q Did he remain in the wheelhouse with you from the time you came on watch?

A He did. He went down to make a pot of coffee.

Q About what time was that?

A I don't know. I don't recall exactly when it was.

Q Can I have this a second?

Captain, when you were navigating in

A I seen my shorelines.

Q Were you able to pick out your shorelines by your radar?

A With the radar.

Q How about visually?

A I seen them visually too, yes.

Q Taking the shoreline to your port side, could you tell me about how far off the shore line you were progressing?

A I don't recall offhand what distance I was off the shore on the port side.

Q How about the radar? Were you able to pick it out? Did you look at your radar?

A Yes, indeed.

Q Did the radar show you your position with respect to the shorelines?

A Yes.

Q Do you recall whether it showed that you were mid-channel, close to the left-hand side, or close to the right-hand side?

A About mid-channel.

Q Would you have steered a compass course at all in this area?

A It is very difficult to do that with

the tide.

Q Again, you were using seaman's eye and whatever land markings were available to you to steer.

A Right.

Q Could you tell me what you were steering, or what you were using as a guide while you were looking for the can buoy?

A What I was steering as a guide? I didn't understand the question.

Q What you were using as a guide while you were steering and traveling in the northerly direction while looking for the can buoy?

A I was using my radar and my visual observation.

Q And again then, can you tell me what you saw and what you were using to determine where you should steer?

A The shore lines is what I was using. The shore line I was using for a guide.

Q You said you were looking at the chart, Captain, am I correct?

A I have looked at the chart, yes.

Q And did you approximate where that

can buoy should have been?

A Yes. That is what I was looking for, yes.

Q And do you know about how far off the shore it should have been?

A Yes, I realized where it should have been.

Q About how far would you say?

A How far the can?

Q From the shoreline.

A I'd say approximately maybe an eighth of a mile, maybe something like that.

Q And can you tell me how far from the shore your tug was at this time?

A I was centrally in the center of the river.

Q All right, the river as you come around Bear Mountain Point starts to bend on the east, am I correct, Captain?

A Yes.

Q And where were you, what side of the river were you on when you came around Bear Mountain Bridge?

A Well, I was --

Q When you came through Bear Mountain Bridge having signaled for any traffic in the area? Had you signaled for traffic?

A I called for traffic.

Q Did you receive any response?

A No.

Q So having received no response, would you have shaved -- what is that called? Anthony's Nose there when you came around? By shaving I mean would you have been more to the easterly side of the river there?

A A particular bend like that I would have been favoring the easterly side.

Q When you came around, how would you shape up, Captain? Would you then have headed due north or would you have started to shape your course north? How would you shape your course?

A Just the way the river is running, using the relation to the shore.

Q After you came around Anthony's Nose, were you running parallel with the shorelines? Generally parallel with the shorelines?

A Generally centrally located with the relation to the banks.

Q What did you see dead ahead of you, if anything, other than the ice that was accumulating at Mystery Point, accumulating north of Mystery Point?

A What did I see?

Q Yes.

A Well, I didn't see the can buoy, and I was looking for the can buoy.

Q Was there any broken path in the ice at that time?

A No.

Q Were you breaking ice going up through there?

A Yes, I was breaking some ice.

Q There was no channel cut for you in that area?

A No, there was no channel, no.

MR. LOS QUADRO: The expression "breaking ice" connotes to me solid ice. Perhaps, Mr. Beshlian, you can ask him some questions, or I can on cross, what the consistency of the ice was, if it was solid ice, and he was actually breaking it, or it was loose ice.

Q Maybe you can tell us what was the

A Yes. I sent a deck hand up to call the tanker men out and look at the extent of the damage of the barge.

Q Did you get any report back on the extent of damage?

A Yes, that she had a hole in it, and I was checking the oil slick.

Q Was this observable prior to your turning around in the river?

A Yes.

Q Almost immediately?

A Yes.

Q Am I correct that up until the time of the grounding the deck hand was not in the wheelhouse with you?

A No, he wasn't there.

Q And he wasn't out on the barge or out on the deck?

A He was bringing either the coffee up or he was there right after that.

Q You said you headed down river.

A We tied up at just about Bear Mountain Bridge. They call it Bear Mountain State Park.

MR. LOS QUADRO: I know where you did

Coast Guard?

A This here was the only report.

Q That's the only report you filled out?

A Right.

Q Was there a hearing held with respect to this accident?

A I had an interview with one man down at the Coast Guard.

Q It was an informal interview?

A Yes.

Q No record or anything was made?

A No.

Q Captain, before starting out on this voyage, did you receive any instructions from the master as to how you were to proceed?

A No.

Q When you relieved him down in the area of Haverstraw, did he give you any information with respect to winds and weather, tide conditions?

A Well, we usually talk it over a little bit, but just routine relief of one another.

Q Did he give you any specific instructions or advice as to what to expect as you were heading up river?

A No, I didn't.

Q Were there any written orders in the pilothouse, like sailing orders I guess you might call them, as to how you should proceed when going through those waters?

A No.

Q In other words, everything was left up to your determination?

A I would say so, yes.

Q Did you sign any statement concerning the accident other than that accident report?

A No.

Q That's it? That's the only written document you made with respect to the accident?

A Right.

Q That you recall?

A Yes.

Q What was the visibility in the area just prior to the time you had the grounding?

A Oh, I would say probably a mile or better, something like that.

Q Had it improved from the time you went to watch, or did it remain pretty much the same?

A Probably pretty much the same, light

the time of the grounding, just a couple more questions.

You said you were navigating in what you felt to be the middle of the river while you were looking for the can buoy.

Were you using the east and west bank of the river to fix your position at that time?

A Yes, I was.

Q At the time of the impact, was it a severe impact?

A It was a hard one.

Q A hard one?

A Yes, it was. It was a hard shot.

Q Did the towing cables part?

A No, it was just the bump.

Q Just the bump?

A Yes. Nothing parted but me.

Q You had no lookout other than yourself at the time?

A It was not me.

Q You are saying the conditions didn't require a lookout.

A No.

MR. BESHLIAN: I can't think of anything

else, Billy.

EXAMINATION BY

MR. LOS QUADRO:

Q Captain, did you hold any license or licenses issued by the United States Coast Guard on February 3, 1974?

A Yes.

Q Is the license you hold now a reissuance of that license, or is this a new issue to a license you hold now?

A It's the same one.

Off the record.

(Discussion held off the record)

Q How long had you been working on the tug OCEAN PRINCE prior to February 3, 1974?

A About a year. Over a year I would say.

Q You would say over a year?

A Yes.

Q In that time were you steering in the boat?

A Yes.

Q As a mate?

A Mate and captain.

can recall?

A I'd have to read some of these things. I couldn't tell you exactly in timewise how long I reduced speed.

Q Why did you do that? Why did you reduce your engine speed?

A Well, first off I didn't pick up this can buoy, Can No. 25, and I was deeply concerned over it, and I was extremely cautious.

Q After reducing your engine speed, did you continue to look for this 25 can buoy?

A That's right.

Q Did you refer after that point to your radar again to try to pick it up on your radar?

A Yes, sir, I did.

Q Did you use your searchlight at any time after reducing engine speed?

A Yes.

Q Were you illuminating ahead?

A Yes, I was.

Q Were you able to see the shorelines?

A Yes, I seen them all right.

Q Prior to the grounding, were you able to observe either visually or on your radar any

Q It wasn't that type of ice?

A No. It was nothing that would. I would estimate it probably was eight inches thick.

Q What I am driving at is did you have any difficulties proceeding through it as you were proceeding as far as you were concerned in the center of the river, but as you were proceeding through it did you have any difficulty making your way through the ice?

A No, I don't think so.

Q Okay.

Was the ice slushy at times or at various points? Was it soft? Was it slushy or was it chunky?

A It was chunks. I don't believe it was slushy.

Q Was there a greater ice accumulation closer to the shorelines than there was in the river or vice versa, or in the river? I mean in the center of the river, or was it uniform from shore to shore, as best you can recall?

A That would be hard to say. I couldn't recall just all that much at that particular time.

Q Now, you referred earlier to an

375—Affidavit of Service   The Reporter Co., Inc., 11 Park Place, New York, N. Y. 10007

United States Court of Appeals
For the Second Circuit

In The Matter of

Tug Ocean Prince et al.

Plaintiffs and Third Party Plaintiffs
Appellees and Cross Appellants

v.

United States of Americas

Third Party Defendant-Appellee

AFFIDAVIT OF SERVICE

STATE OF NEW YORK,
COUNTY OF New York , ss:

Raymond J. Braddick, agent for McHugh Heckman Smith & Leonard being duly sworn, deposes and says that he is over the age of 21 years and resides at 11 Park Place New York, New York

That on the 3rd. day of March 1978 at 26 Federal Plaza New York, New York he served the annexed Brisf and Appendix (Vols 1 & 2) upon Thomas J. Cahill U.S. Attorney, Att: William Losquadro Esq. in this action, by delivering to and leaving with said attorney 2 true copys thereof.

DEPONENT FURTHER SAYS, that he knew the person so served as aforesaid to be the person mentioned and described in the said action

Sworn to before me, this 3rd.
day of March 1978

Raymond J Braddick

ROLAND W. JOHNSON
Notary Public, State of New York
No. 4509705
Qualified in Delaware County
Commission Expires March 30, 19